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ABSTRACT

The Subcommittee on 21st Century Competitiveness, Committee on Education and the Workforce, U.S. House of Representatives met at 10:33 a.m. on Wednesday, June 20, 2001, in Room 2175, Rayburn House Office Building to hear testimony on H.R. 1992, the Internet Equity and Education Act of 2001. Chairman of the Subcommittee, Hon. Howard P. "Buck" McKeon presided, and limited the opening statements to the chairman, the ranking minority member, and a designee from each side. Contents include: Opening Statements of Chairman McKeon and Vice Chairman Johnny Isakson; Statement of Stanley O. Ikenberry, President, American Council on Education, Washington, D.C.; Statement of Lorraine Lewis, Inspector General, U.S. Department of Education, Washington, D.C.; Statement of Richard J. Gowen, President, South Dakota School of Mines and Technology, Rapid City, South Dakota; Statement of Omer E. Waddles, Executive Vice President, ITT Educational Services, Inc., On Behalf of the Career College Association, Indianapolis, Indiana; and Statement of Joseph S. DiGregorio, Vice Provost for Distance Learning, Continuing Education and Outreach, Georgia Institute of Technology, Atlanta, Georgia. The following Statements are appended: Written Opening Statement of Chairman McKeon; Written Statement Submitted for the Record by Ranking Member Patsy Mink on Behalf of Congresswoman Betty McCollum, Subcommittee on 21st Century Competitiveness, Committee on Education and the Workforce, from Steve Shank, Chancellor, Capella University, Minneapolis, Minnesota; Written Opening Statement of Vice Chairman Isakson; Written Statement of Stanley O. Ikenberry; Written Statement of Lorraine Lewis; Written Statement of Richard J. Gowen; Written Statement of Omer E. Waddles; Written Statement of Joseph S. DiGregorio; and Letter Submitted for the Record by Ranking Member Patsy Mink from Juliet Garza, Chairperson, Advisory Committee on Student Financial Assistance, Washington, D.C.; Report to Congress on the Distance Education Demonstration Programs Submitted for the Record by Ranking Member Patsy Mink; and Questions Submitted for the Record to U.S.Secretary of Education Roderick

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Paige by Ranking Member Patsy Mink; Responses Submitted for the Record by U.S. Secretary of Education Roderick Paige to Questions Submitted by Ranking Member Patsy Mink; Letter Submitted for the Record by Chairman McKeon from Secretary of Education Roderick Paige; and Written Statement Submitted for the Record by Chairman McKeon from Dr. Ron Chenail, Vice President for Academic Affairs, Nova Southeastern University, Fort Lauderdale, Florida. A Table of Indexes is included. (AEF)

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H.R. 1992, THE INTERNET EQUITY AND EDUCATION ACT OF 2001

ED 472 674

HEARING

BEFORE THE

SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS

OF THE

COMMITTEE ON EDUCATION AND THE WORKFORCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, JUNE 20, 2001

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Hearing On "H.R. 1992, the Internet Equity and Education Act of 2001"

Wednesday, June 20, 2001

U. S. House of Representatives

Subcommittee on 21st Century Competitiveness

Committee on Education and the Workforce

Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:33 a.m., in Room 2175, Rayburn House Office Building, Hon. Howard P. "Buck" McKeon [chairman of the Subcommittee] presiding.

Present: Representatives McKeon, Isakson, Ehlers, Mink, Tierney, Holt, Wu, Rivers, Andrews, and Hinojosa.

Also present: Representative Hilleary.

Staff present: George Conant, Professional Staff Member; Blake Hegeman, Legislative Assistant; Sally Lovejoy, Director of Education and Human Resources policy; Patrick Lyden, Professional Staff Member; Michael Reynard, Deputy Press Secretary; Deborah L. Samantar, Committee Clerk/Intern Coordinator; Mark Zuckerman, Minority General Counsel; James Kvaal, Minority Legislative Associate/Education; Joe Novotny, Minority Staff Assistant/Education; and Brendan O'Neil, Minority Legislative Associate/Education.

Chairman McKeon. A quorum being present, the Subcommittee on 21st Century Competitiveness will come to order.

We're meeting today to hear testimony on H.R. 1992, the Internet Equity and Education Act of 2001. I'm going to limit the opening statements to the chairman, the ranking minority member, and a designee from each side. Therefore, if other members have statements, they will be included in the hearing record.

With that, I ask unanimous consent for the hearing record to remain open 14 days to allow member statements and other documents referenced during the hearing to be submitted in the official hearing record.

Without objection, so ordered.

OPENING STATEMENT OF CHAIRMAN HOWARD P. "BUCK" McKEON, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

I want to welcome our witnesses here today and thank them for taking the time to appear before the Subcommittee. I also want to thank Representative Isakson for introducing H.R. 1992, the Internet Equity and Education Act of 2001. As Co-Chair of the Web-based Education Commission, he took a lead in discovering regulatory and statutory impediments to expanding access to higher education programs through the Internet, especially for non-traditional students. In addition, he has provided a great deal of leadership to this committee, and it is great to serve with him. I appreciate the work that he does on the Subcommittee and the Full Committee.

In the early 1990s, Congress and the administration enacted a number of reforms aimed at fighting abuses in our federal financial aid programs. Examples of these abuses include correspondence courses that offer little value to the student, or recruitment practices in which bounty hunters were paid on a per head basis to bring students into a particular school. In order to end these abuses, Congress and the administration may have ultimately imposed a straightjacket on all of higher education where handcuffs on a few bad actors may have sufficed.

This legislation we're considering today will remove the straightjacket while maintaining program integrity and implementing some of the recommendations of the Web-based Education Commission.

First, it will remove the burden of the "12-hour rule." Under the 12-hour rule, institutions are required to keep literally hundreds of thousands of additional attendance records every year, just to show that their students attended certain types of work sessions. This legislation does not eliminate the safeguards that exist in the law under the 12-hour rule. Rather, it would hold programs for non-traditional students, which do not meet on a standard quarter or semester basis, to the same standard as their more traditional counterparts.

Second, it makes exceptions to the 50 percent requirement by allowing a limited number of institutions to offer more than 50 percent of their courses by telecommunications or to serve more than 50 percent of their students through telecommunications courses. Eligible schools will have to be already participating in the student loan program and have student loan default rates of 10 percent or less for the three most recent years.

Third, H.R. 1992 helps address some of the confusion regarding incentive compensation provisions. Under current law, an institution may not compensate an individual either directly or indirectly for the enrollment of students in an institution.

In one recent instance, an institution was fined $187 million for violating this provision; and as a result, the institution was forced to close and to put approximately 9,000 students on the street.

We've been told that schools have little guidance in complying with this provision. In cases where guidance has been issued, it often conflicts with or contradicts guidance that has been issued to a different institution. In other words, schools truly don't know if they are in violation of the law or not. The legislation we're considering will allow reasonable business practices, while continuing prohibitions that prevent potential students from being taken advantage of.

It is rare when all sectors of higher education agree on an issue. However, there is a clear consensus that the incentive compensation issue needs to be fixed, and that it needs to be fixed sooner, rather than later.

Finally, distance education provides a tremendous opportunity to greatly expand access to postsecondary education to those who may otherwise be unable to participate. So it would be a shame to waste this potential because of outdated notions and regulations. Basically, what we're really trying to do is play catch-up with what's happening in the real world.

This legislation provides a needed first step to ensuring that a postsecondary education is available to all who want to pursue it. At the same time, it does not diminish or undo needed integrity provisions in the law.

In closing, I want to thank the ranking minority member of the Subcommittee, Mrs. Mink, for her work on this legislation. This truly has been a bipartisan process.

As we go forward with this process, I look forward to working with all of my colleagues on both sides of the aisle to increase access to higher education for all Americans.

I now yield to the distinguished ranking member of the Subcommittee, Mrs. Mink, for the purpose of making an opening statement.

WRITTEN OPENING STATEMENT OF CHAIRMAN HOWARD P. "BUCK" McKEON, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES – SEE APPENDIX A

Mrs. Mink. Thank you very much, Mr. Chairman, and I would like first to welcome all of the witnesses who have taken their time to come here to give us the benefit of their knowledge and experience about a problem that we are confronted with as a nation, prompted in large extent by the rapidity in which we have been overtaken by technology and its explosion, not simply as a business tool, but here we find as a tool for obtaining education and learning, necessary certificates in order to advance in job placements, and, really, opening up a very, very large area for student participation. And we should be welcoming this enlargement. It's a very exciting time in which we live.

This is not only an opportunity for young people, it is for the people in middle age and senior citizens, as well, who are constantly looking for educational opportunities. So I think it's very appropriate that the majority and the Chairman, in particular, has started this Congress with an investigation of what we can do to enhance the ability of people to access the computer for training and educational purposes, while, at the same time, making sure that we have adequately protected the students who are enlisting the computer as their educational device and making sure that where the federal investment is also being conjoined into this enterprise, that the taxpayers' investments in this educational effort is well protected.

The students make a large investment in obtaining a loan and if their education has been faulty or inadequate or lacking the promises that were made to it, then it is the student who has to bear the burden, not only the failure of the educational experience, but also the obligation that they undertake to repay back the loan to the Federal Government.

So it is on that stand that these hearings, I believe, begin at a very appropriate time, and, hopefully, the Committee will have a chance to inquire deeply into the questions that arise.

Student financial aid is really the bulwark of federal participation in the educational experience at the higher levels. Without it, we would not be the dynamic, progressive country that we are. We wouldn't be in the position of global leadership. So we take this step forward into technology education as a real challenge and opportunity for our country as a whole.

There are a number of cautions which I hope that we will raise during these hearings and perhaps pursue under extensive investigations after these hearings. I am aware that the Department has a report on the 12-hour rule, which should be coming out soon. We should await what that report says. We also should have the Department's advice and guidance on incentive compensation, which is a major part of the concerns that I bring to the table on this issue. The Distance Learning Demonstration Program is in only the second of its five year test and we're only beginning to obtain information from that exercise, and we certainly ought to await its findings and recommendations.

So I think with all those caveats, we are still obliged to have a very open mind on this issue, and, today, we embark upon that inquiry, to see what the universe holds for us as a nation, and, specifically, what the responsibilities of this committee is to our colleagues in the Congress and certainly to the departments that are managing this program.

Mr. Chairman, I look forward to the testimony today and I ask unanimous consent that the written testimony of Steve Shank, chancellor of Capella University, be placed in the record at an appropriate place. This is the request of Congresswoman Betty McCollum.

Thank you.

Chairman McKeon. Without objection, so ordered.

WRITTEN STATEMENT SUBMITTED FOR THE RECORD BY RANKING MEMBER PATSY MINK ON BEHALF OF CONGRESSWOMAN BETTY McCOLLUM, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE, FROM STEVE SHANK, CHANCELLOR, CAPELLA UNIVERSITY, MINNEAPOLIS, MINNESOTA – SEE APPENDIX B

Chairman McKeon. Several members of this subcommittee have co-sponsored this bill, but I would like to give the sponsor of the bill, Mr. Isakson, an opportunity to speak on this legislation. I now recognize Mr. Isakson for five minutes, to make his opening statement.

OPENING STATEMENT OF VICE CHAIRMAN JOHNNY ISAKSON, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Mr. Isakson. Well, thank you very much, Mr. Chairman, and, at the outset, let me thank you for your opening statement, which was a very articulate explanation of exactly what House Resolution 1992 does. I also want to thank Ranking Member Patsy Mink for all the input that she has had and for raising the concerns that she has raised, which, obviously, we've given great thought to in the design and the preparation of this bill.

I want to also thank the members of the panel who are here to testify today, some of whom I've come to know recently, and some of whom I met in my work with the Commission. One is a dear contributor of the Georgia Institute of Technology, an outstanding individual in his own right, who will be introduced a little bit later. Additionally, I want to, Mr. Chairman, if I can, point out Mr. David Buyer - if he'll raise his hand in the audience - who was the staff director and really the spearhead behind the Web-based Education Commission, which released its report on December 19, 2000.

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I was pleased to serve as Vice Chairman of that Commission and under Chairman Kerrey from Nebraska, who was truly a joy to work with during the course of that work. It was one of the more enlightening things I've ever had happen to me in terms of public service. Our mission was to investigate what was happening with regard to the role of distance learning and education and it did not take long for us to learn that we in government were way behind higher education throughout this country and K-12 in many areas in terms of the delivery of quality content over distance learning and the use of the Web.

At our visit to Georgia Tech, which took place early last year, we saw demonstrations of the classroom of the future. There, technology is integrity with instruction and can be delivered over miles with the type of interaction that is just incredible and at a price tag that is falling all the time.

I also learned, much to my surprise, that Georgia Tech delivers a master's in electrical engineering totally over the Web and the Internet. In addition, other institutions of higher learning, like MIT and Stanford, consult and collaborate, as well, to see to it that the finest quality content education in the United States of America is deliverable through high technology and that residency or seat time, which used to be the guiding principle of higher education in terms of attendance and participation, was irrelevant.

One of the most important things we learned is that in America today what was thought to be a non-traditional student 10 or 15 years ago is becoming a more traditional student every day. The number of adults over the age of 40 enrolling in postsecondary higher education has gone up 235 percent in the past 20 years. I know, from visiting college campuses, technical schools and programs in my own state that many, many Americans are going back to higher education to retool themselves to be employable in the 21st century; much of this is accomplished through distance learning. Non-traditional students have families, they have children, they have jobs, they have requirements, and the Internet allows the opportunity for them to learn anytime, anyplace, and anywhere. This is being demonstrated in higher education institutions in this country, to a very high degree of quality.

I am by no means unaware that the 50 percent rule and the 12-hour rule and, subsequently, the changes that came about on compensation for student loans all were derived to address perceived problems. I understand that abuses have taken place, and nothing in this bill portends or even contemplates opening a door to anybody who would deliver anything other than a first rate education. Nor would it open a door to any institution that would have anywhere in terms of a very negative default rate on student loans themselves. We worked very hard to ensure that while we open the door for the expansion of the Internet and education in America, we did not open the door for any abuse by virtue of the changes in these rules.

So, again, I want to thank the members of the panel for being here today, and for their participation, which I know will be enlightening. I want to thank Chairman McKeon for all of his support in this effort, and ranking member Patsy Mink for her support and her effort in trying to bring about a rule that's modernized.

I will close with this, Mr. Chairman. If you read the Web-based Education Commission Report and you read pages 91, 92 and 93, which set about the recommendations we're dealing with today, there's a quote from someone who testified at our hearings that said, "If we, in America, continue to focus on `seat time' as the rule-making procedure for education, we're focusing on the wrong end of the student." I think that was a very good quote and I think very appropriate to this hearing, and I thank the Chairman for the time.

WRITTEN OPENING STATEMENT OF VICE CHAIRMAN JOHNNY ISAKSON, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES – SEE APPENDIX C

Chairman McKeon. Thank you.

I now recognize Mr. Tierney for five minutes to give an opening statement.

Mr. Tierney. Thank you, Mr. Chairman. I won't use five minutes - just to say I thank Mr. Isakson for bringing this legislation forward, and the Chairman for having these hearings, and I, too, am just concerned that we make sure that we do not open up this avenue for a return to fraud and abuse that we had in the past, and I'll be anxious to hear the witnesses address just how each of these provisions will, in fact, maintain the integrity of the previous statute, while still moving us forward in modernization in the way people get educated.

So I'll look forward to the testimony and thank all of you for joining us today.

Thank you, Mr. Chairman.

Chairman McKeon. Thank you for your statement.

I want to welcome our distinguished panel again today.

Before I begin, I would like to turn over the time to Mr. Isakson, who will introduce two of the witnesses, and I will introduce the other three.

Mr. Isakson. Thank you, Mr. Chairman. It's a real pleasure to introduce Dr. Richard Gowen of the South Dakota School of Mines and Technology, the president of that institution and the former president of South Dakota State University, but, more importantly, an invaluable participant in the Web-based Education Commission. One of the wonderful parts of this job is you get to meet a lot of wonderful people, and meeting Dick was indeed a pleasure and an honor for me and I'm delighted that he could come here and testify today.

I can tell you, as one that probably had to come up on the learning curve further than anyone on the Web-based Commission, that his extensive knowledge and hands-on application of techniques with regard to distance learning and the use of the Web in technology and education will lend tremendously to this hearing as it did to the

Commission's report and I appreciate Dick being here today.

And Dr. Joseph DiGregorio is, fortunately, a resident of Atlanta, Georgia. He is the vice president of Distance Learning at the Georgia Institute of Technology, who hosted our Commission, in I guess it was about March of last year, about a year ago, a little over, where we saw some unbelievable demonstrations of the practice of distance learning and education from K-12 through postsecondary education that's being done at the Georgia Institute of Technology.

I want to thank Dr. Wayne Club for his tremendous support in hosting the Commission at Georgia Tech and for the invaluable information they provided to us. And, Doctor, we want to welcome you here today, and, as a Bulldog, I'm happy to have a Yellow Jacket here any time we can.

Thank you, Mr. Chairman.

Chairman McKeon. Our first witness this morning will be Dr. Stanley Ikenberry. Dr. Ikenberry has been president of the American Council on Education, in Washington, D.C., since 1996. He started about the same time as I became chairman of the Higher Education Postsecondary Education Committee. It's been an honor to work with him. I know he will be leaving his post soon and we will miss working with Dr. Ikenberry in that position.

ACE is an organization that seeks to promote higher and adult education. Prior to arriving at his current position, he served as president of the University of Illinois. In addition, he held senior positions at Penn State and administrative and research positions at West Virginia University and Michigan State University. He holds a Ph.D. from Michigan State University.

Next, we will hear from Ms. Lorraine Lewis. We had the opportunity to visit the other day and get to know each other a little bit better. Mrs. Lewis is the Inspector General of the United States Department of Education here in Washington, D.C., and prior to being sworn in as Inspector General, in 1999, Mrs. Lewis served as the chief legal advisor to the director of OPM. In addition, she served as General Counsel with the U.S. Senate Governmental Affairs Committee. She holds a J.D. degree from Harvard University.

Mr. Omer Waddles is Executive Vice President of ITT Educational Services, Inc., in Indianapolis, Indiana. ITT is a provider of technology-oriented postsecondary degree programs. Before arriving at his current position, Mr. Waddles served as President of the Career College Association, an association of approximately 750 proprietary schools of higher education. He also served in a variety of positions developing the federal legislative and regulatory processes affecting higher education in the United States, including work as Minority Counsel on the Senate Committee on Labor and Human Resources. I guess now you'd be in the majority committee. In addition, he was counsel to the former senior advisor to the U.S. Secretary of Education. Mr. Waddles holds a J.D. from Petit College of Law at Ohio Northern University. A very distinguished panel - we're fortunate to have you here today.

We'll hear first from Dr. Ikenberry.

STATEMENT OF STANLEY O. IKENBERRY, PRESIDENT, AMERICAN COUNCIL ON EDUCATION, WASHINGTON, D.C.

Mr. Ikenberry. Thank you, Mr. Chairman. I thank you and the members of this committee -

Chairman McKeon. Is your mike on?

Mr. Ikenberry. Okay. I think we're doing it.

Thank you, Mr. Chairman, and thanks to the members of this committee, not just for the opportunity to testify before you all on this important piece of legislation, but for your leadership, generally, to advance access and quality in higher education in this country. I can't think of anything that's more important, both to the citizens of the United States, and also to the future of our country. I thank you for the contribution you make in that regard.

The American Council on Education, as you mentioned, Mr. Chairman, represents 1,800 2- and 4-year public and private colleges in the United States, and we believe this legislation is necessary to allow higher education in this country to begin to catch up with the enormous changes that are taking place in both the way in which higher education opportunity is delivered and the way citizens are able to gain access to it.

As a bit of background, you mentioned my earlier service at the University of Illinois for some 16 years. During that time, the University of Illinois, through support both from the state and from the National Science Foundation, developed a center called the National Center for Supercomputing Applications, and out of that endeavor developed MOSAIC, which was the first Web browser. I don't think anybody at the university at that time had the faintest idea of what was going to happen in terms of that new technology. But we do know now, looking back, that that growth has been quite phenomenal.

Nationally and internationally, the number of computers connected to the Web grew from 1 million in 1992, to some 60 million in 1999, and that number is obviously quite in excess of that today. The percentage of U.S. households that are connected with access to the Internet was 2 percent in 1994, and it is now estimated to be in excess of one-third of all households today; and two out of three Americans has access to the Internet somewhere, be it at home, work, school or elsewhere.

Some see this as a technology revolution in higher education. Some see it as an evolution. But whether you just think of it as a revolution or an evolution, it is clearly transforming the way colleges and universities offer educational opportunity. I believe this new era is leading us into what could very well be one of the most exciting eras in American higher education.

Distance education and on-campus instruction, in fact, are beginning to converge. The new "in" term now is distributed education that is intended really to encompass both of these worlds, distance learning, if you will, and on-campus application of technology. The bricks and mortar that the past has embraced have been described by some now as clicks and mortar, rather than bricks and mortar.

Here's just a few indications of the trend. The number of courses offered by two- and four-year institutions increased from something less than 25,000 courses, in 1995, to more than double that number, 52,000 courses, in 1998. Again, that number is undoubtedly larger today, in 2001. Enrollments have doubled from about 750,000, in 1995, to 1.6 million, in 1998. Again, that trajectory is beyond that today.

I don't think I need to tell you, Mr. Chairman, or the members of the Committee, that higher education institutions, by our nature, tend to be conservative institutions. We're not particularly rapid to change on a number of matters. And while more are enthusiastic about the potential of distance education, nearly all of our institutions believe that we need more information about student learning outcomes, about governance issues, intellectual property right issues, economic feasibility, sustainability, quality accountability, and a host of other complex issues.

But we are learning on all of these things as we move forward in this new era. The fact is that things are changing much more rapidly than many of us in the field would ever have begun to imagine.

But as we move forward, the experimentation that is occurring must be supported by policies that preserve the integrity of the federal student aid system and that do not unduly constrain innovation at the same time. We think both of these things, as Congressman Isakson pointed out, can be managed hand-in-hand.

Candidly, the challenge we face is to build in sufficient flexibility into the statute to make federal student aid available to students who are using these new and exciting learning options without creating new avenues for scam artists and opportunities for fraud to gain a new foothold. No one wants to recreate the problems that damaged the student loan programs so badly in years past and marred the public's view of higher education. But I have no doubt that this is the balance that this bill introduced by Congressman Isakson seeks to strike.

H.R. 1992 addresses three specific problems we think are very important to move us ahead in this field.

First, the bill proposes to eliminate the restriction that prevents an institution from conducting more than 50 percent of its courses via distance education. That arbitrary number is increasingly hard to defend.

Second, the bill would relax, a bit, the incentive compensation provision that makes it impossible to award merit pay and increases to any individual engaged in admissions and financial aid. This, too, we think will add flexibility if it's done properly.

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And, third, the bill will eliminate an obsolete regulation called the 12-hour rule, that, for some institutions of higher education, establishes a kind of federal standard for classroom instruction. Arguably, I think that standard is probably a half century out of date, but it is certainly out of date in the 21st century.

A question has been raised as to why these changes ought to be made now, and if I may, Mr. Chairman, I'd like to address that issue head on, particularly since we're just two or three years away from beginning the reauthorization of the Higher Education Act. I think there are three very persuasive reasons why we should act now.

First, the Department of Education has not been able to make these changes as a part of the normal regulatory process, and when that regulatory process is not responsive, I think legislative action becomes the logical and appropriate alternative. But, second, and in many ways more importantly, by making the changes now the Congress and the higher education community will have two years, at least, to monitor and assess the impact of these changes before we go into the reauthorization of the Higher Education Act. As a result, we can, at that time, make any mid-course corrections or refinements that seem to be indicated as a result of the experience that we gain with these changes over the next two years.

And, third, we need to make the changes now because distance education, frankly, is changing much more rapidly than any of us could possibly have imagined, even five years ago.

If changes are not made now, we're going to wait until after the higher education reauthorization, and, most likely, until after the rule-making process concludes subsequent to reauthorization. That could easily mean that we'd see no relief for four or five or more years, and that's not good in a sector of higher education. It is a sector of society that is changing so rapidly, as this particular sector is changing.

So, Mr. Chairman, let me say in closing that the higher education community did not propose these changes in the gate-keeping provisions in the last reauthorization. We thought, at that time, we lacked sufficient experience, sufficient information in this area, and it simply wasn't clear to us where the changes in technology were going or where the growth of the Web would lead. And, in addition, we had a considerable concern for maintaining the integrity of the Title IV programs. All of that combined to cause us to cling to the status quo, unusual as it is for us.

We still don't know all of the answers on this front, but we do know the trajectory. That trajectory tells us that our institutions are doing remarkable things to improve access to education and to improve the quality of education. They demonstrate this both on campus and off campus, and by using these new technologies creatively. So we believe the time has come to respond and to loosen some of these strictures that inhibit the new educational ventures.

I want to close, Mr. Chairman, if I may, coincidentally, by quoting Chairman Greenspan, who just this morning, apparently, was testifying before the Department of Labor's 21st Century Workforce Summit. He made the following quotation - if I could close with it – "The higher education system must remain sufficiently flexible to meet the needs of a changing society." I think that's precisely what this legislation is all about. It is about flexibility and closely monitored flexibility that I think will equip the higher education community and the Congress to craft a much more responsible, sensible piece of legislation when reauthorization of the higher education bill comes up a few years from now.

I thank you for your leadership on this, and we look forward very much to working with you and your colleagues on this matter.

WRITTEN STATEMENT OF STANLEY O. IKENBERRY, PRESIDENT, AMERICAN COUNCIL ON EDUCATION, WASHINGTON, D.C. – SEE APPENDIX D

Chairman McKeon. Thank you very much.

Ms. Lewis?

STATEMENT OF LORRAINE LEWIS, INSPECTOR GENERAL, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, D.C.

Ms. Lewis. Thank you, sir.

Mr. Chairman and members of the Subcommittee, thank you for this opportunity to discuss issues concerning H.R. 1992 and your desire to increase access to postsecondary education, while maintaining the integrity of our Student Financial Assistance programs. My testimony today will focus on the questions we believe should be answered before changes are made.

There have been great advances in technology and in the growth of the Internet since the major amendments to Title IV in 1992. In addressing these changes, it is important that the policy decisions of the future be informed by the lessons of the past. We believe there are two guiding principles: one, changes that encourage innovative educational program delivery must also ensure accountability of taxpayer dollars and preserve the integrity of the SFA programs; two, all students should receive an appropriate amount of instruction to justify the amount of SFA funds awarded. Simply put, we need to know what we are paying for.

With regard to the 50 percent rule, in the 1980s and early 1990s, the work of my office identified numerous problems with institutions offering correspondence only programs that resulted in many schools being terminated from the SFA programs. The Department had difficulty in determining the appropriate program length due to a lack of scheduled instructional hours. Excessive awards of SFA funds were common. Thus, the 1992 amendments established the current rule that limits an institution's correspondence courses and students to 50 percent of its total courses and students.

We believe that in revisiting that limitation, certain policy issues should be considered.

First, whether the criteria for recognition of accrediting agencies should require that they have specific standards for evaluating the quantity and quality of distance education programs. We performed a review of the management controls for distance education by accrediting agencies and state agencies. Our report, issued in September, 2000, found that inconsistencies exist in these oversight agencies' standards to evaluate distance education. Congress should consider whether to require that recognized accrediting agencies have specific standards for distance education.

The second issue in this area concerns the similarities between correspondence courses and certain courses offered through telecommunications. Some telecommunications programs delivered via the Internet require a student merely to complete lessons in Web sessions or return them via electronic mail. This appears very similar to correspondence courses provided through the U.S. mail. Nonetheless, students enrolled in correspondence courses are considered only half-time students for awarding SFA funds, while students in telecommunication courses are considered full-time students.

Another issue is whether the cost of attendance should be calculated in the same manner for distance education programs as for residential programs. Institutions must establish the cost of attendance budget in calculating the amount of eligible SFA awards. For students engaged in correspondence courses, this budget does not include an allowance for room and board. For students enrolled in telecommunications programs, there is no similar limitation and they can be eligible for the same amount of SFA awards as students in residential programs. Their need for a budget that includes an allowance for room and board should be examined.

Moving on to the 12-hour rule: the amendments of 1992 mandate that an undergraduate academic year be a minimum of 30 weeks of instructional time in which a full-time student is expected to complete at least 24 credit hours. The Department faced difficulty in applying this requirement to programs measuring student progress in credit hours, but not using a semester, trimester or quarter system. Therefore, it adopted the 12-hour rule in an attempt to assure consistency in the amount of instruction between programs for the amount of SFA funds awarded. It is based on the assumption that a full-time student attempting 12 credit hours in a semester would have 12 hours of scheduled instruction per week.

The proposal to abolish this requirement raises the following issues: first, should the term "instruction" be defined? Neither the Act, nor the implementing regulations, define what constitutes instruction. Providing a statutory definition of instruction would help clarify for the Department and the higher education community the appropriate amount of SFA awards for various methods of education delivery.

Further, should student study groups be included as instruction? In our audit report on the University of Phoenix, issued in March, 2000, we found that the institution's residential programs offered much less classroom instruction than programs provided by traditional term-based institutions because they included study groups as instruction to meet the 12-hour rule. In institutions providing traditional residential classroom education in semesters, a student generally would be provided three hours of scheduled classroom instruction for 15 weeks or 45 hours of classroom instruction for a 3 credit hour course. The University of Phoenix provided only 20 hours of classroom instruction for a 3 credit hour course.

Congress should consider whether it intends to allow institutions to award the same amount of SFA funds for providing 20 versus 45 hours of classroom instruction. Similar issues arise in measuring the amount of distance education via telecommunications.

And, finally, with regard to the prohibition on incentive compensation, in the 1992 amendments, Congress expanded to all SFA programs the prohibition on the use of incentive compensations based on success in securing enrollments or financial aid. The prohibition was designed to protect students from the high pressure tactics used by recruiters to enroll students in programs for which they may not have been prepared or did not want. The students were saddled with unwanted debt at increased cost to the taxpayers.

The proposed modification to this restriction raises questions of Congress' intent. Merely removing the term, "indirectly," from the current provision does not, at this point, clarify what types of recruiting activities and compensation plans will be permitted and those that will remain unallowable. Adding the term, "nonsalaried," to the provision on prohibited incentive payments, at this point, does not clarify what types of payments will be permitted.

This language possibly might be interpreted to permit institutions to make salary adjustments monthly, or even weekly, based on prior success in securing enrollment, a practice that would not be allowed under the Department's current guidance. And recognizing that this is the very beginning of a legislative process, these are the types of questions that we recommend be addressed through the course of the legislative process.

And, finally, the legislation continues to ban an institution from paying an entity based on enrollment success. The bill limits this ban to entities "directly engaged in student recruiting or admission activities." Congress should clarify what types of contractual arrangements would be covered by this ban.

I appreciate the opportunity to ask these questions. I look forward to working with you and the Department and other members of the community in addressing them along the way, and I'd be happy to answer any questions that you have.

WRITTEN STATEMENT OF LORRAINE LEWIS, INSPECTOR GENERAL, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, D.C. – SEE APPENDIX E

Chairman McKeon. Dr. Gowen?

STATEMENT OF RICHARD J. GOWEN, PRESIDENT, SOUTH DAKOTA SCHOOL OF MINES AND TECHNOLOGY, RAPID CITY, SOUTH DAKOTA

Mr. Gowen. Thank you, Mr. Chairman and members of the Committee. Thank you for the opportunity to testify on behalf of H.R. 1992, the Internet Equity and Education Act of 2001. It is a privilege to speak as one of the commissioners of the Web-based Education Commission. I am also the President of the South Dakota School of Mines and Technology.

The Commission was established by the Higher Education Amendments Act of 1998. Former Senator Bob Kerrey chaired the Commission. Representative Isakson served as the vice chairman of the Commission. Representatives Bingaman and Fattah and Senator Enzi served as members of the Commission.

The Commission held five hearings, beginning on February 2, 2000. We received electronic testimony through our Web site and interacted with hundreds of people across America. The Commission found the Web to have the potential to provide true educational equality for all citizens by enabling each person to learn and develop to the fullest extent of their individual ability. The report of the Web-based Education Commission to the President and the Congress of the United States contains the recommendations that the 16 member bipartisan commission determined to be of critical importance for the use of the Web to improve education.

The Commission heard concerns about a range of issues that limit the ability to achieve the educational potential of the Web. Among these issues were concerns for the financial aid regulations that initially were intended to protect students in postsecondary education, but now have the effect of limiting the access of students to education throughout the Internet. Three specific federal financial aid issues were brought to the Commission's attention: the 12-hour rule, the 50 percent rule, and the federal prohibition on providing incentive compensation in college admissions.

When Congress amended the Higher Education Act in 1992, it added a specific definition of an academic year that prescribed at least 30 weeks of instructional time. Full-time undergraduate students in traditional academic programs are expected to complete at least 24 hours in that time period to be eligible for the maximum amount of financial aid.

However, the law was silent on establishing an academic workload requirement for students enrolled in Title IV eligible programs offered in a non-traditional time segment. In 1994, the United States Department of Education issued formal regulations defining a week of instructional time to mean 12 hours of "regularly scheduled instruction, examinations or preparation for examination" for programs that were not offered in standard terms.

One effect of this 12-hour rule is to limit the ability to provide students access to innovative, self-paced learning opportunities available now through the Internet. The Commission was urged to recommend changes in the 50 percent rule that requires Title IV eligible institutions to offer at least 50 percent of their instruction in a classroom-based environment. In seeking, correctly, to halt abuse in the Student Financial Aid program, these rules have the unintended effect of curtailing educational opportunity among thousands who seek financial aid for college, but who do not otherwise fit into the mainstream definition of a college student.

Please consider these statistics. The span from 1970 to 1993 saw a 235 percent growth in students older than age 40. Many of these students are served through non-traditional programs. Over the same period, the traditional college student cohort, 18 to 24, increased by only 35 percent. Forty percent of these traditional college students receive financial aid as opposed to only 17 percent of the undergraduates older than 40. Regrettably, these regulations deny students access to the powerful capabilities now available through the Web to provide learning experiences that can be individualized to respond to the specific needs of each student.

The Commission received testimony concerning the prohibition of colleges and universities that participate in federal Student Financial Aid programs from paying any commission, bonus or other incentive payments to third party entities based directly or indirectly on success in securing enrollment of students. Enacted to protect students against abusive recruiting tactics, this law is now interpreted to apply to the enrollment of students via "Web portals." Federal regulations permit an institution to use its own Web site to recruit students. However, if the institution pays a Web portal to provide the same service and that payment is based on the number of prospective students visiting the site who ultimately apply or enroll, the institution is at risk of losing Title IV eligibility.

The Commission was told that higher education groups have asked the Department of Education to consider changing regulatory language, reflecting the growing reliance on higher education on Web portals. However, the Department has concluded that this provision could only be changed through new legislation.

As a commissioner of the Web-based Education Commission, I believe the clarification and enhancements to expand the opportunities for higher education contained in the Internet Equity and Education Act appropriately addressed the financial aid issues and concerns presented to the Commission. The proposed replacement of the 12-hour rule and the proposed modification of the 50 percent rule will encourage institutions with demonstrated ability to provide traditional education opportunities to expand their course and program offerings to provide anytime, anywhere, and any paced learning through distance delivery techniques.

On behalf of the many persons and organizations who have provided testimony to the Web-based Education Commission, it is a privilege as a member of the Commission to endorse and encourage the enactment of H.R. 1992, the Internet Equity and Education Act of 2001.

I thank you for the opportunity to appear before you today, sir.

WRITTEN STATEMENT OF RICHARD J. GOWEN, PRESIDENT, SOUTH DAKOTA SCHOOL OF MINES AND TECHNOLOGY, RAPID CITY, SOUTH DAKOTA – SEE APPENDIX F

Chairman McKeon. Thank you.

Mr. Waddles.

STATEMENT OF OMER E. WADDLES, EXECUTIVE VICE PRESIDENT, ITT EDUCATIONAL SERVICES, INC., ON BEHALF OF THE CAREER COLLEGE ASSOCIATION, INDIANAPOLIS, INDIANA

Mr. Waddles. Thank you, Mr. Chairman, for this opportunity to come before the Committee and to offer testimony.

As you introduced me, I am with ITT Educational Services. I also represent the Career College Association in my testimony and its 963 members, who represent over a million students.

It's a pleasure to be able to step back into this role. To have at one time been the counsel and staff director for the predecessor to this subcommittee, with Chairman Ford, it's good to be able to come back and revisit. And sometimes, as I was mentioning to Terry Hartle, before this, seek redemption on dealing with some of these issues, as I sat here in 1992 and helped put these rules together.

They were real issues that we were dealing with at that time and they're real issues today that we must continue to grapple with. But I think this legislation, H.R. 1992 - how appropriately titled - is a step in the right direction and I congratulate Congressman Isakson for his leadership and his work on the Committee in leading to this point.

So much of the testimony that has been given already has covered many of the areas that I have included in mine and you can see in my written testimony. And I congratulate Ms. Lewis on her questions because I think they go to the heart of issues that we do need to deal with as the Committee moves forward, and in these early stages of the legislation.

But as I sit here and I mark through my prepared remarks because they are being mentioned one after the other, I sit and I look at these four portraits of chairmen that have gone before and I've had the opportunity, myself, to work with each one of them in various roles. Each one of them taught me and others that access and quality are the two issues that we have to continually look at, and I hope you see as a theme throughout my testimony. Whether it's the rural hills of Kentucky or Los Angeles' inner city, or in York, Pennsylvania, or in the suburbs of Detroit, the same issue echoes each time. It's access to quality, quality education. But is it only for the good of society that we look for these items? It's not, and in primarily the early part of my testimony, I try to lay out that there has been an explosion in electronic education. However, it only mimics a larger explosion in the economy as a whole. Right now, .coms seem to be grabbing the headlines, but that's not the real story for what has changed the economy as we see it today. The reality is that 90 percent of the information technology jobs that are going on out there, and are being created, are in traditional economies and are in traditional businesses.

The ITAA, the Information Technology Association of America, has said that there will be 425,000 information technology jobs that will go unfilled this coming year. META, another consulting group, predicts it to be 600,000. Even in light of the economic changes that are occurring every day, it's a downturn, but the change has taken place. Now it is up to us, as providers, to respond to that and to provide the skills and the education and the opportunity for individuals to pursue those changes.

The Departments of Commerce and Labor say that people will change careers at least five times. We've seen numbers go as high as seven or eight times in their career. Well, how do they change those careers without having the opportunity to seek that lifelong learning opportunity that is now just a matter of fact? Employers will be sending people back to school. Individuals will be seeking ways to ensure their success as they go forward.

Each of the items that we're talking about today, whether it's the 12-hour rule that I think has been a well-intended and well-used element, but its time has passed, and now we need to go past the issue of process, the same with the 50 percent rule.

The use of the 10 percent default rate is a good step. In my testimony, I say, as we go forward, whether it's in reauthorization or other revisits, we need to look at the issue of quality, not just process. You're good in your ability to provide distance education if you're at 9.9 percent. You're not as good if you're at 10.1 percent on the default ledger. It's the blunt instrument that Congresswoman Mink and others and I have looked at for many years, but we had to use something. As the words were used back when we were using things, heads had to roll and blood had to flow. This was due to the fact that we had to change the respect for the issues related to higher education.

But now we're at a different time and I ask that you look at this not isolated. We look at the issue of incentive compensation and we say, "Well, if we take that back, does that mean that we no longer have the ability to ensure quality?" That is not the only item that is out there in this highly, heavily regulated world that I now stand in on the other side of the ledger. And which I run an operation, as the chief operating officer, of a 400 million dollar organization that serves over 29,000 students in 28 different states.

That means I have 28 different regulatory bodies that I need to deal with, and deal with appropriately. We have never, even though we have been investigated at various times, just like any college, any university, we've never had a finding, a material finding, from the Department of Education or the Inspector General or others. We're very proud of that because we're very conservative and we're very focused on what we do. What do we do? We provide education, quality education.

That's what I think these elements will allow us to move forward in doing. These changes are needed, but again, this is only a first step as we go forward. I think that there is the triad that we must rely upon: the states, the accrediting bodies, the Federal Government. Each of them needs to be activated and they are more aggressive. Each of them contributes. And in the area of distance education, they each must be challenged to come in to the 21st century and apply rules that are real and are effective and are not delayed in the way that they're given, so that there is clarity as to what we must do out in the field. We just need to know, and that's what the field wants to have.

I thank you very much, Mr. Chairman, for the opportunity to come before the Committee. It's been an exciting moment for me to have this chance to sit on this side of the table and to provide testimony. I'll look forward to answering any questions and helping as we go forward.

WRITTEN STATEMENT OF OMER E. WADDLES, EXECUTIVE VICE PRESIDENT, ITT EDUCATIONAL SERVICES, INC., INDIANAPOLIS, INDIANA – SEE APPENDIX G

Chairman McKeon. Thank you.

Dr. DiGregorio.

STATEMENT OF JOSEPH S. DiGREGORIO, VICE PROVOST FOR DISTANCE LEARNING, CONTINUING EDUCATION AND OUTREACH, GEORGIA INSTITUTE OF TECHNOLOGY, ATLANTA, GEORGIA

Mr. DiGregorio. Thank you for providing Georgia Tech with the opportunity to speak this morning on issues we believe are of vital importance to all of us involved in providing high quality credit courses and degree programs to distant students throughout the nation.

The full context of what I would like to say today is contained in the written information that I've given you, the written statement, but I'd like to condense that into a five minute presentation for the purposes of this hearing.

I would first like to commend and congratulate Congressman Isakson for his vision and foresight in proposing amendments to the Higher Education Act of 1965 that will greatly expand student access to higher education via modern telecommunications technologies. If the United States is to remain economically competitive and also maintain its position as a worldwide leader in postsecondary education, we need to implement policies that will make education available to all citizens of the nation.

As the global leader in the development and dissemination of education programs through innovative technologies, the United States cannot afford to exclude any of its citizens by keeping in place roadblocks that restrict access to lifelong learning and

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training. Georgia Tech believes that the enactment of H.R. 1992 will make it easier for many postsecondary schools to provide educational opportunities to an increasing number of our citizens.

As described in testimony I presented in August, 2000, to the Web-based Education Commission, Georgia Tech believes that policy makers should focus on assisting producers and consumers of Web-based education and on eliminating barriers that could prevent the Web-based education market from reaching its full potential. We believe that the role of the government should not be to control or direct Web-based education, but, rather, to advise, facilitate, support and provide incentives and resources to both Web-based education producers and consumers.

In its landmark report to the President and the Congress of the United States, the Web-based Education Commission called for "revising outdated regulations that impede innovation and replacing them with approaches that embrace anytime, anywhere and any pace learning." We believe that H.R. 1992 will begin the implementation of this important recommendation of the Commission by providing an expansion of Internet-based educational opportunities for postsecondary students through the elimination of some of the barriers existing under current law. Georgia Tech strongly supports the broadening of opportunities for on-line education within the context of maintaining the integrity of federal student aid programs.

Two regulations that H.R. 1992 will address are, of course, the 50 percent rule and the 12-hour rule. These rules were originally directed towards concerns about correspondence education and are now applied to modern methods of distributing education through electronic technologies. They make no provision for modern virtual universities such as Georgia Tech, or for self-paced on-line courses that rely less on face-to-face instruction than do traditional courses taught in campus classrooms.

The Department of Education's Distance Education Demonstration Program, which has been referred to earlier here, allows a select group of institutions to ignore the 50 percent rule, the 12-hour rule, and four other federal rules that inhibit access to distance learning, while still providing federal financial aid to students. It is a promising indicator that less regulation can expand educational opportunities via new technologies and delivery systems.

We believe that the 50 percent rule hinders the development of legitimate, quality distance education programs and student access to higher education through these programs. Likewise, the 12-hour rule imposes unnecessary constraints upon student access to federal financial aid for credit courses and degree programs delivered in non-traditional settings. Such constraints hinder innovation and flexibility in the offering of academic programs.

Perhaps the greatest benefit to be gained from the enactment of H.R. 1992 will be increased access to postsecondary education for disadvantaged students and/or under-represented groups. These students frequently cannot take at least 12 hours of instruction per week due to family, job, health and other commitments, and thus do not qualify for full financial aid. The elimination of barriers to financial aid for these students will certainly narrow the so-called digital divide by providing needed educational

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opportunities to begin or advance careers and to contribute and participate in the economic successes of our nation.

The number of non-traditional students enrolled in postsecondary schools has grown significantly over the past decade and will certainly continue to increase. Federal policy should encourage, not impede, this growth. To be competitive in a knowledge-based economy, the United States must increase quality-based, responsibly-managed education and training programs for a larger percentage of its citizens and provide opportunities for those citizens who, for whatever reason, cannot currently obtain educational access. H.R. 1992 is directed towards expanding access for all citizens. We commend the Committee for taking important steps toward helping the nation achieve these goals.

Again, we thank you for providing our institution the opportunity to comment on these vitally important issues and applaud the introduction of H.R. 1992. On behalf of Georgia Tech, I pledge our continued commitment to work with this committee and within the higher education community to improve the delivery of high quality on-line educational opportunities for all citizens in our nation.

WRITTEN STATEMENT OF JOSEPH S. DiGREGORIO, VICE PROVOST FOR DISTANCE LEARNING, CONTINUING EDUCATION AND OUTREACH, GEORGIA INSTITUTE OF TECHNOLOGY, ATLANTA, GEORGIA – SEE APPENDIX H

Chairman McKeon. Thank you very much.

We have over 7,000 postsecondary schools in the country, and to try to sit here and pass rules that deal with each and every one of them, and interpret those rules, is something that is constantly frustrating to me. Especially, in a time where such rapid change is taking place.

And just listening to the panel, you can see the outstanding leadership that we have represented here that is represented all across the country. We have tremendous leadership out there in schools, tremendous teachers, and professors. Great things are happening and I think our main focus should be to not get in the way. This is, I think, good efforts to pull back in some of the areas that we know are in the way.

Dr. Ikenberry, your organization has participated in this report that has been talked about that the Department of Education will be issuing on the 12-hour rule. Some have questioned whether we should wait for that report before acting on the issue. In your testimony, you said we should do it now. Could you briefly describe the process you've been through and do you think that we should wait for that report or should we move as quickly as we can in these areas?

Mr. Ikenberry. I really do think that the opportunity is to move now. I think the biggest incentive to move now is what we'll learn over the next two or three years as these new regulations are applied. We won't know all the answers this time around, but we won't know all the answers four or five years from now either. But I think by making some changes now, by monitoring them very carefully, and by setting up some evaluative procedure that enables us to capture the learning that is out there, I think that four or five years from now, when you and your colleagues are reauthorizing the Higher Education Act, you can, at that point, come up with a much more useful piece of legislation than if we do nothing right now.

The other incentive to move now is, very frankly, every place I go across this country and, frankly, around the world, have literally an explosion in this area happening. There are so many exciting, creative things that are being done by many institutions that you and other members of this committee know well, and many, frankly, that most of us haven't heard of.

There's a lot of experimentation going on. We need to not get in the way of that - I think your comments are quite appropriate - and we need to let a few flowers bloom, then come back at the time of reauthorization to assess what we have learned. If we need to go further, we can go further. But if we need to pull back a little bit, at that time, that will also be the opportunity to do so.

Chairman McKeon. The comments I made earlier about the straightjacket that we probably could have taken care of by using a rifle approach instead of a shotgun approach also has me concerned that we pass - somebody does something to take advantage of the system and we pass a law that affects everybody. And we have just so few people that are doing it, but it then throws a barrier out there for everybody.

Ms. Lewis, on incentive compensation, your testimony states that the law prohibits basing compensation solely on the number of students that enroll as a result of recruiting activities. That is not quite accurate. The law bans payments, commissions, bonuses, or other incentive payments based on recruiting success. Nowhere does it say "compensation" or, in effect, ban salary payments.

Have you created a policy against allowing salary payments for recruiting, and are you enforcing such a policy?

Ms. Lewis. No, sir. I appreciate any comments on the testimony, but certainly we always intend to accurately reflect the law, and I do not set policy. The policy, of course, is set by you and the Congress and the implementing regulations of the Department. Certainly what we intend is to point out what the large ban that came from significant abuses years ago was intended to prohibit incentive payments for the result of enrollment or an award of financial aid.

Chairman McKeon. Thank you.

Ms. Lewis. And certainly that was the intention in the testimony.

Chairman McKeon. Thank you.

Dr. DiGregorio, some have questioned how different on-line and other distance education courses actually are from correspondence courses. Given the programs that you offer, would you care to elaborate on the difference between correspondence and on-line courses?

Mr. DiGregorio. I certainly would, and there's no easy answer to that question because on-line distance learning is a lot more difficult to define than is a typical correspondence course.

I think my definition would be that the typical correspondence course is really vertical education, where there is a transfer of information and knowledge between the instructor and the student, back to the instructor, back to the student. Whereas on-line education tends to be a more horizontal process of learning, learning interactions among students, between students, between students and other experts in the field, between students and resources that are available on the Web, such as libraries, bibliographies, and so forth.

We at Georgia Tech use state-of-the-art streaming audio and video technologies and we synchronize with slides, simulations, and other multi-media, to take advantage of the Web-based courseware that's currently available to make this a horizontal learning process rather than a teaching process. I think the mind-set change that needs to be made in this country is that education in the future, thanks to the technologies we're talking about, is less involved with teaching and more involved with learning.

So I think the correspondence courses fit the mold of what we've been doing for over 800 years, horizontal - sorry - vertical education. The future is really the horizontal education involving a lot of learners facilitated by an instructor rather than taught by an instructor.

Chairman McKeon. Thank you very much.

Mrs. Mink?

Mrs. Mink. Thank you very much, Mr. Chairman.

This has been a very interesting panel. The overview conclusion one has to arrive at is that everybody is interested in reaching for the expansive potential in education that comes from technology.

Everyone is agreed that we must maintain high quality education over the Web. My question to whoever wishes to respond is, given that everyone's objective is maintenance of high quality, how can we be assured that the education that is being afforded over the Internet maintains that standard of high quality if we eliminate the 12 credit hour rule and the 50 percent requirement?

Yes, Mr. Waddles?

Mr. Waddles. Congresswoman Mink, I think it's a fair question that we do need to continually remind ourselves of, but I think it goes back to, as I mentioned in my testimony, the triad. I think that the responsibility is not just shouldered by the Department of Education and the law that may have the 12-hour rule associated with it or the 50 percent or the incentive comp, it's the quality of the program that the_

Mrs. Mink. Who determines that quality?

Mr. Waddles. The accrediting body that that school is accredited by is charged with going in, looking at that curriculum, looking at the delivery mechanism, looking at the teachers that provide it, looking at the entire environment that supports it to say, does this meet their standards?

Mrs. Mink. This is a national accrediting body that you're referring to?

Mr. Waddles. I'm referring to the accrediting bodies that accredit each of our institutions as we speak right now, the same ones. Not necessarily going to a different one, but looking at the north centrals, the regionals, the nationals and saying, "You must" - and many of them are already developing rules and regulations that institutions who are pursuing this arena of distance education must adhere to.

Now that said, this is, again, the evolution or the revolution process that's going on in the states, as well. That's another part of the triad that has to look at it.

We just announced this past week that we're entering into E-Learning, providing, hopefully in the third quarter, a project management electronic commerce bachelor's degree, 100 percent on-line. We partnered with Pearson Publishing to be able to provide that - Blackboard, Inbenet, and others that are part of our process. We had to go to the state of Indiana. We're applying to ACICS, our national accreditor, to look at it.

The state of Indiana, in their rules and regulations, their first thing that they had to check off on a box was, well, we need to go see the facility. Well, there isn't a facility in distance education. They realize that. They had to do a letter stipulating that. They then realized they have to start changing, evolving their rules and regulations as they look at it.

The issue of distance education still comes back to the quality of the education, the quality of the relationship that occurs in that learning process.

Mrs. Mink. What assurance do we have in this legislation that this quality examination is going to be conducted before we eliminate the 12-hour and the 50 percent?

Mr. Waddles. The same assurance that you have right now with regular education that they're looking at every day.

Mrs. Mink. Mr. Ikenberry?

Mr. Ikenberry. Yes, I thought the important change here, the paradigm shift, if you will, that applies not just to distance learning, but to all of higher education, is a move away over the last 10 years from evaluating quality on the basis of process to trying to evaluate quality on the basis of learning outcomes, what students actually know and are able to do. Now -

Mrs. Mink. Well, do we have in process the capability of making those examinations, and how do we decide? The history that I come from is the era where we had considerable difficulty and we had all sorts of institutions arising hither and yon, offering education to people which they could not fulfill, and where the students were saddled with enormous debt for an education that proved to be worthless.

So knowing that this whole field is going to just burst in our eyes, literally, I want to make sure that this ingredient of quality, which you're all assuming, is going to be maintained, and that we're not opening the Pandora's box and inviting everyone into this field, and find ourselves in great jeopardy of harming the students. I realize that all of your institutions are going to survive. Great. But what about the students and what about the taxpayers?

Mr. Ikenberry. I commend you for your pressing on this issue, and it is not an easy job. It is not an easy task to assess outcomes and what a student actually knows and is able to do as opposed to counting seat time and other process factors. But it is that commitment to assess outcomes and genuine quality that the accrediting groups across the country and college and university leaders generally are struggling toward. And, of course, at the elementary and secondary education level, we've just adopted a piece of legislation that attempts to do precisely that measurement of learning outcomes for youngsters in the elementary and secondary schools as well.

So I think there is a shift not to count simply the hours of instruction that you've had in a seat or the hours per week, but to try to move more in the direction of measuring and assessing the actual quality of the learning outcomes. It isn't easy, but that's the challenge that we think is the response, not just to technology, but to all of education.

Mrs. Mink. May I have one more final question? I have my red lights on.

Chairman McKeon. You have about two or three people who want to still answer that last question.

[Laughter.]

Mrs. Mink. Oh, okay.

Mr. DiGregorio. I'd like to address that question also, if I may?

Mrs. Mink. It's up to you. The red light is on.

Chairman McKeon. I think it's a good question. We should give him a chance to answer it.

Mr. DiGregorio. It's an absolutely fine question, in fact. But I'd like to approach it from a different point of view, and perhaps a controversial point of view.

I don't think it's the accrediting agencies that are going to be the final determinant of quality in this new era of education. Education is a $700 billion a year business in this country, ranking it second only to health care in percentage of gross domestic product. And, as such, I think it will be the marketplace that will be the final judge of quality in education, not accrediting agencies, not government agencies. I don't think it's something that can be - quality cannot be dictated. Those who provide the best quality programming at the most reasonable price and the best student services will be the ones that survive in this new market. We have to look at ourselves as producers of a commodity and students as consumers of that commodity. And if we present that commodity at a fair price and high quality, we will win. We will survive. Others will not. I think that will be the final judge.

Mr. Waddles. And just to build off of that, I think that's an excellent point, but I also believe that we're not changing the doorway. The barriers to entry into higher education and participation in Title IV were built up back in the 1992 and 1986 reauthorizations, and improved after that. We're not changing those barriers. The players that are in the space are the players that are now adhering to the financial responsibility requirements that are adhering to the 90/10 rules, which are adhering to all of these other elements. They still have to do that. That's part of the assurance of quality. We're not just opening the door and saying, "Anybody that wants to can come in and provide this."

Mr. Gowen. Your provisions that you have put within the Act that require substantial development and demonstration that you are a traditional institution and that you do meet the financial aid requirements, the 10 percent but there's also a factor that is coming into play in technology. In today's Internet activities, we now can move towards the individual learner and there is the opportunity to bring quality into focus by inviting the individual learner to do what we all do in the marketplace. We judge whether we have been served well or not.

One element that is now available on the Internet is to provide the user the opportunity to go back and to, in effect, rate whether they have received the service in an instant involvement. That's a change in which you now have feedback that those who are involved in education can find out whether others have found it to be useful or not. That's quite a change in our technology and it's quite a change in education. It will change the way those of us who provide education interact with our students.

Chairman McKeon. Thank you.

Mr. Isakson?

Mr. Isakson. Thank you, Mr. Chairman. This accreditation issue is very important and I want to ask a couple of questions just for the edification of everyone, because I had to learn all of this myself at the hearing.

Number one, Dr. Ikenberry, isn't it true that accreditation, rather than being uniform in this country, is, in fact, regional and by discipline more than it is across the board?

Mr. Ikenberry. That's absolutely correct. In fact, the diversity in quality assurance accreditation in this country reflects the same diversity of our institutions. So we have regional accreditors for the various geographic regions of the country, and there are probably 50 or more disciplinary accreditors in law, business and chemistry, you name the field. And through the community, we have the Council on Higher Education Accreditation that's designed to try to oversee the accreditors, if you will.

Mr. Isakson. Ms. Lewis, isn't it true that you can't get a student loan unless you're going to an accredited institution?

Ms. Lewis. Yes.

Mr. Isakson. It's very important, Mrs. Mink, for all of us to understand this whole accreditation issue. The loan program, its prerequisite is that the institution be accredited. So I mean we're not talking about preventing people from going to nonaccredited courses. They can't do that now.

Dr. DiGregorio, I want to thank you because you made an outstanding observation, which I'm going to maybe comment on more than ask a question.

We all need to understand that this bill solves what has previously been the insoluble for many Americans, and those Americans are people who are economically or physically disadvantaged. This bill isn't about people that have the financial means to go to the University of Georgia, Georgia Tech, UCLA, Cal Berkeley or Michigan. This is about people who never even thought they could get a college education because of the limitations of time, distance and money.

At Georgia Tech - I want to give them a plug - they have one of the finest research areas in learning for the disabled that you have ever seen, and we cannot forget that there are many disabled Americans who never had the hope of having a job because of their disability. Now, because of the use of technology in employment, they have the ability to have very meaningful employment through technology where their disabilities previously would not have allowed them to do that. And in the case of fixing these rules and affording that opportunity, many of the Americans we in Congress run for to help, the disadvantaged and the disabled, are the ones that are benefiting from this.

Ms. Lewis, I want to ask you another question.

Ms. Lewis. Okay.

Mr. Isakson. And we had a nice conversation yesterday and I really enjoyed it and learned a lot from you.

Ms. Lewis. Thank you.

Mr. Isakson. These rules, many of them, came about in reaction to fraud, waste and abuse, the great trilogy of American politics. And you just shared with me yesterday the difficulty in going out and determining what was really going on. You had to put people on airplanes, fly them to schools, go on an interview, and go through filing cabinets.

It seems to me that the Internet offers you a better way to monitor what kind of coursework is going on, what is really happening, than contemporary education in terms of going to the bricks and mortar location. Because you could enroll an investigator in a course of study, they could start pulling it down, and, all of a sudden, if it was a fraud, or if, in fact, what it was purported to be wasn't there, you could more quickly find it through the same distance learning that's being approved than you could ever find it by going and investigating colleges and universities on their campuses. Am I wrong?

Ms. Lewis. I don't think you're wrong. I think in the large scheme, the after the fact investigative or audit work is always labor-intensive and time-consuming. Our testimony looks to raise the question on the issue of quality. We did a management information report and issued it to the Department, in September of 2000, that identified, based on surveys of 29 accrediting agencies in 50 states, that there are inconsistencies and concerns, high levels of concerns, about how to assess outcomes, curricula, information about the institution.

So our thought is that, as you go through the legislative process and set the policy, that the issue of addressing the quality, which is the accrediting agency's issue and responsibility, be thought about now. Are they prepared? Some states have enacted laws. Some states have not. So we look to identify that. At this present time, there's a high level of concern in that community about how to go about assessing.

Ultimately the other question we raise goes to the quantity of education or instruction. And those questions, which in large part connect to the financial aid that is ultimately awarded or that persons are eligible for - what is the appropriate amount of instruction that justifies that large federal investment in that instruction?

Mr. Isakson. Thank you.

Chairman McKeon. Thank you.

Mr. Hinojosa?

Mr. Hinojosa. Thank you.

First, I want to thank and commend Chairman Buck McKeon and my good friend and colleague, Johnny Isakson, for inviting this education panel to testify before our committee. I find it very interesting and I am very pleased that there is an effort through this legislation, H.R. 1992, to try to improve access to higher education for all Americans in our country. I am also very pleased and I will try to work very closely with the authors of this legislation because I too want to fight the fraud and abuse that has prevailed in the last 20 years in higher education through proprietary schools and some colleges and universities.

I am wanting to address a question, first, to Lorraine Lewis.

Ms. Lewis. Good morning.

Mr. Hinojosa. And if any of the other members of the panel wish to address the question, I would welcome your answer.

I looked at the summary of the demonstration programs and it indicates that all participants experience growth in their programs. However, minorities did not seem to make any gains in participation. Why is that? Or do you think there is less availability to minorities, women and minorities? I don't understand why they are not shown in the report, nor that there is work being done to ensure that this distance learning is available to them.

Ms. Lewis. Sir, I don't have any information coming from work of the Office of Inspector General that I can speak to on that issue. Perhaps the Department of Education itself might be in a better position. But, at this point in time, I might have to defer to my colleagues on the panel relating to that.

Mr. Hinojosa. I'll ask Mr. Waddles if he can address it?

Mr. Waddles. I think one of the clear elements as we're in the initial stages of the development of this is its access. It's the issue of does someone have the financial resources to have the tools to access distance education? Do they have the computer? Do they have the on-line access point? I think those are elements that we are still in the process of overcoming as we look at who is distance most available to?

I think that as more households have computers and have on-line access, the more you'll see minorities and the disadvantaged use this tool as an available one for their education.

Mr. Hinojosa. Mr. Waddles, you may not know this, and then you might. But in the last two years, the Department of Education and the Department of Agriculture made available lots and lots of money through E-rate to be able to hook up many of our computers in schools and libraries throughout the country. I know that in my case, representing an area that is very poor, we received a lot of money, millions of dollars, and we were successful in hooking them up.

I'll give you an example. Odem, Edroy, Sinton formed a little cluster, three little rural schools, and they have excellent computer technology that has resulted over the last two years. They are offering distance learning through Del Mar Community College, in Corpus Christi, and some of the students are graduating with 24 hours, credits, you know, that go towards an associate degree or a four year university degree.

You need to find out where they are throughout our_especially the regions of the country that have double digit unemployment or twice the national unemployment rate, and see how we can bring them into this type of access, because it is definitely the way to go. I'm just surprised that in the materials that I've read during the last hour, you're not making enough of an effort to women and minorities, especially as it says here that many are 30 to 40 years old and they are naturally looking for jobs that will take them from just hourly rates of six or seven hours - rather, 6 or $7 per hour, to the ones that pay 10 or $15 an hour, so that they can improve the quality of life for their children.

Mr. Waddles. I think it's going to be a critical part of the evolution of this tool. And that's what it is; it's a delivery mechanism that will have to continue to evolve. But I think in communities and in society, we will see more access points created. I think you'll see boxes that are only dedicated to Internet access as opposed to having all of the peripherals related to it, that will make that more accessible. But it's critical.

As you'll see in my testimony, I think that's one of the strongest arguments for making distance education more available, whether it's in rural areas or it is for the disadvantaged or disabled. I think that it is an additional tool for that, but it has to be done again. And we've said it over and over again, but it has to be done in a quality way that can be measured.

Mr. Hinojosa. Well, it is my opinion that there are already in place the technology, the equipment, the hook-up to the Internet. All of that is now available in many parts of the country, and I wish that we could, Mr. Chairman, try to provide them the information necessary so that we can try to expand this.

And, again, my closing comments are that this H.R. 1992 is excellent and I would like to work with you.

Chairman McKeon. Thank you very much.

Mr. Wu?

Mr. Wu. Thank you, Mr. Chairman.

With respect to the narrow confines of H.R. 1992, I agree with the gentleman from Georgia, my friend, Johnny Isakson. But I would like to engage this panel in some of the broader comments which I've heard during the course of the discussion here. It concerns me deeply that beyond the bounds of this specific legislation, we're using words like, "Well, accreditation will be much less relevant and the marketplace will determine outcomes." I'd like to engage on that topic and one other one.

My concern about this is, if we really are talking about a paradigm shift to a market-based education system, first of all, I'd like to inquire as to whether that really is feasible or not, because we have been on a nonmarket education basis for a very long time, and all the evidence seems to point that education is not a very good profit-making activity or else we would not have a public education system for part of it and we would not have the need for charitable contributions to support other parts of our education system.

And if we really are talking about a paradigm shift to a profit-making, market-based education system, then we really need to work out whether, A, that's feasible, and B, whether that is desirable, because I would submit to you that perhaps_perhaps some of the prerequisites for people participating in a self-governing, democratic society, that the ability to achieve that minimum bar should not be a market-based system, that that is something that we would provide as a public good. That's one set of discussions.

I'm going to turn it over to you all to discuss that as soon as I get to topic number two, which is the paradigm shift from an input-based education system to an outcome-tested system. I'm speaking now as someone who has represented education institutions, research institutions, tried to help them with distance learning, and it's been a tough row to hoe for a very well-intentioned set of institutions. But, at the same time, I think that we need to be cognizant of the limitations of distance learning.

It is true that it will bring quality education to those who are not otherwise able to come to a Georgia Tech or an Oregon State. But I doubt that those are the limits of your marketing efforts. There must be something to be said for the traditional paradigm where we bring scholars and students into close proximity and some of those purposes are for classic classroom learning, but most of the education, I suspect, that happens in traditional settings doesn't happen in the classroom, but happens as a result of other interactions which are possible in bringing people into close proximity.

If we are to move to this new paradigm of distance learning and outcome testing, well, I hope that we also work up some reasonable approximations of that kind of proximity-based learning. I'd like to turn it over to you all to discuss those two challenges.

Mr. DiGregorio. Since I made the original comment about it becoming a market-based commodity, I think I'd like to respond.

Is it feasible, is it desirable are the two questions you asked. I don't think that there is even a question of feasibility. I think it's going to happen. Whether it's desirable or not is something to be determined.

I think the reason why education has not been market-based - market-driven over the last 800 years or so is because it's never been a discipline or a commodity that was easily deliverable to people who needed the product. What the technology does is allow companies, for-profit companies, to deliver a product, a good product, to consumers as they never have been able to do before. Higher education has always been the purview of educational institutions because we have had places where people could come to receive an education, and if they couldn't come there, they couldn't get an education.

The technology allows us to distribute that education worldwide and therefore not just higher education institutions are involved in delivery, it's for profit educational institutions that are seeing that they also can deliver a quality product at a reasonable price. Thus it becomes a competitive environment that I call a market-based economy.

I think it's going to happen. The numbers are big. The growth rate is phenomenal. I think the competition is good for traditional higher education. But I think it will be, eventually, the consumer that determines who is delivering a quality product and who is not. And I realize these are controversial statements. Not all academics agree with what I say, by the way, and probably some on our panel wouldn't agree either.

Mr. Waddles. I guess since I'm one of the ones that represent the for profit sitting here at the table, being with ITT Education Services and the Career College Association. There's a couple of points that I would respond with: there is a for profit education world out there that can see this as a viable way to deliver education and assure quality at the same time, and that the two can go hand-in-hand.

I would challenge the idea that education has not, over that 800 years, been market-based. The whole apprenticeship guild process that occurred back in Europe, et cetera, was based on what the market was needing. It may not have been the Oxfords or at the highest level as it evolved through Europe, but it was market-based and it was education. There were various elements that grew through that.

I think that one of the things that we take pride in what we do is that we have employers in every one of our schools, 70 around the country - and I know this is similar to many others that are in our space, as well - they comprise our advisory board. They tell us what is needed, what kind of educational skills are important to what they do.

Many times, what we're hearing is, we need people that can communicate with each other, we need people that can stand up in front and lead, we need people that can read well, we need people that can do the various math components, the very basics of education. But they also want specifics on skills. Then we try to craft our curriculum around that so that it's accredited, state-approved, fits within the federal guidelines, and is market-driven.

I think, in my view, the accrediting bodies are not irrelevant. They're absolutely critical to the success of this process. There will be outcome-driven measurements, as we talked about in the second item, but I also think you have to have it at the front end as well. You can't just open the door and say, "Whatever you provide, we'll measure you at the end." You've got to have standards, predisposed ideas as to what that learning will comprise, and then you also have to measure all the way through that process to see if you're attaining those goals. I think that's a critical element to this new evolutionary educational process.

Distance education is not an end all. We have 70 schools. Bricks and mortar are going to be part of our future forever. It's critical. Some students learn best in that environment. Others may have the access and learn better in a different environment. Some students learn best at Georgia Tech. Others will learn best at ITT Tech. That's the wonderful array that this nation's higher education provides. We think that it's all necessary. It's all part of what the plate has to hold.

Mr. Gowen. The questions you raised at the Web-based Education Commission hearings, we heard a wide range of issues, very similar to what you just raised here. But we also observed several things occurring. The technology that now exists is so much different than the way we traditionally have delivered education that it opens new paradigms, new opportunities. We're in a transition time. We find there are many, many institutions rushing to somehow convert what they currently do by using technology. But we also find there are leadership institutions that are moving ahead, and recognizing that we're shifting from a time of teaching to a time of learning and an opportunity for people to develop a different approach to education.

Part of the Web-based Commission's recommendations were to call for a new era of research to begin to understand how this type of technology changes the way we learn. Many of the things that we have seen occurring in the place-bound education are now changing. There will still be traditional education. Our goal is to keep the best of what goes on in our classrooms in traditional education, but to use the technology to provide that capability to any time, anyplace, anywhere, in a learning mode that is different than the teaching mode we've existed in. That's a very, very fundamental shift, it is ongoing, and there will be continued changes over these next years. It's a very, very exciting time, and we're just beginning to touch the tip of that iceberg.

Mr. Wu. Dr. Ikenberry?

Mr. Ikenberry. I just wanted to thank you for raising two, I thought, very insightful comments, and I think both are very well taken.

On the market side, I think we ought to make clear that even though higher education in the United States is probably more market-driven than higher education in any other part of the country in the sense that both federal and state systems of financial aid give students a tremendous option of choices and alternatives. Therefore, students do have a choice. So the market does express itself.

I for one, and I suspect my colleagues would join me, wouldn't say for one moment that the market alone is the final arbiter of quality. That's why both the integrity of institutions and providers of learning options and the strength of a system of accreditation in the United States are very important elements in that package, and I think you were quite proper to raise that point.

On the traditional approaches to teaching and learning, as opposed to technology, I think it's important we not pit these two options one against the other in the sense that probably the greatest application of technology right now is occurring on campus as opposed to off campus. What the results are beginning to show is that it isn't all traditional learning, on the one hand, or all technology, on the other hand, that's most effective. It is, in fact, a combination of the two where you have the human interaction of the classroom joined with the technology. So I think that I wouldn't pit one against the other.

At Illinois, we taught one half of the chemistry lab, for example, through technology. What we found is we had higher retention in chemistry at the end of the freshman year. We had fewer dropouts. We had higher achievement than we did through the traditional method. But it was a combination of the two, technology and traditional instruction.

Mr. Wu. Mr. Chairman, if I could just close on a -

Chairman McKeon. I think we've gone quite a bit over already. We do need to get to Mr. Andrews.

Mr. Wu. Thank you, Mr. Chairman.

Chairman McKeon. Thank you.

Mr. Andrews?

Mr. Andrews. Thank you, Mr. Chairman. I thank the panel for their testimony. I regret not being present for it personally, but I've had the chance to read each of your statements. I appreciate them very much.

Let me strongly endorse the legislation that you and Mr. Isakson have put forward. As one would expect, it is very thoughtful and very beneficial and I look forward to working with you to enact it.

Ten years ago, we did the_nine years ago_we did the 1992 reauthorization. Default rates for student loans were incredibly high. It was costing the taxpayers $5.3 billion a year. Those default rates have fallen to single digits, about 7 percent now, and the cost has fallen to the billion dollar range, perhaps below. And that is because the Committee struck a good balance between the need to ferret out unscrupulous lenders and operators and schools and the need to preserve the extension of higher education to people in all communities and all parts of the economic ladder.

I think we, largely, struck the right balance in 1992, and I think that your legislation here strikes the right balance, as well. It's one of the reasons I want to support it. But I am aware of the fact that there's been another change since 1992. It's a very positive one. That's that welfare roles across the country are down by more than half.

Now I think there are three reasons for that. One is the growth in the economy has created many new jobs that needed to be filled. I hope that continues. The second is that the welfare reform law that we worked together and enacted in 1997, I think has helped to facilitate this change. The third is the very widespread availability of career education in the urban and rural low income communities of the country that are typically homes to persons on public assistance.

I think that this bill is an important step to energizing and continuing the role of that sector of higher education, but I know that there are other issues out there that also need to be addressed. I'm sure that all the panelists would have something to say about this, but I wanted to ask Mr. Waddles, specifically, if I could, about some of the concerns that career education institutions have about some other policies under the Higher Education Act, particularly in the area of refunds and the area of some of the other financial rules that are well-intended, I think, to protect taxpayers, but perhaps have overshot the mark and created some difficulties.

These are some areas I'd like to see the Committee consider and I wonder if Mr. Waddles could discuss some of the problems that are existing in terms of delivery of these education services to students.

Mr. Waddles. Well, I think what you're referring to, Mr. Andrews - and it's good to see you again - is that there are - and I don't think it's unique just to career colleges. I think that there are elements that have been passed at various times, such as the latest refund policy that has a particular impact on career colleges, where the accrediting body or state requires you to take attendance, and the issue of changing refund policies and how much has to be paid back if you are accredited under one area that requires attendance versus another that doesn't. I think that those are issues that will continue to be looked at.

I think that one of the elements that goes to that is, whether it's refunds or default rates or financial responsibility regulations or the 90/10 rules, all of those elements are part and parcel to the business of operating the school, and people have adapted well. And I think that you've seen the education provided over the last 9 years adapt to that. Yet it still gets in the way of the efficiency of the education. Some levels, though, you have to have for levels of quality assurance, to make sure that we don't return to the old days of charlatans. But I don't think that's a possibility under the working relationship that we have and the empowerment of the triad.

But I think one of the things that we have seen, and I haven't had a chance to mention, is negotiated rule-making. One of the elements that we in the community believe is very important is, as we go forward with these changes that we're talking about here, that don't have to always have legislative activity, is a real bipartisan - and when I say "bipartisan" I mean the Department of Education and the community - ability to step into a room and have negotiated rule-making that comes out with an agreed-upon process as opposed to a voicing of opinion, that at the end of the day, someone else makes that decision.

I think that goes to the heart and soul of some of the issues that you're talking about. Some of them are necessary, but it's a matter of how you implement them and how you craft the rules and regulations around them. I think these - whether it's the issue of compensation, incentive compensation, there's been a great deal of questioning as to how do you apply it?

The Inspector General, I think, has tried to look at the law and there's a limitation to what to interpret when the regulation simply mimics what the law says. That's it. Whatever the law said, that's what the regulation is. So the rest of it is left up to us to say, "Well, we'll have to interpret as best we can." It's the clarity that comes with that which is always helpful to us as we try to implement, at all levels of higher education.

Mr. Andrews. Thank you. Thank you, Mr. Chairman.

Chairman McKeon. I want to thank the witnesses. I think this has been a very good discussion and I think you've been very good at answering the questions that were asked. You gave us some things to really think about.

Mrs. Mink, did you have any closing comments?

Mrs. Mink. Mr. Chairman, if I might ask on behalf of the minority if it would be appropriate to inquire of the witnesses various questions that we don't have time to ask and submit those questions to them and that their responses, together with the questions, might be inserted in the record, since we do have the 14 day leeway to do that?

Chairman McKeon. Fourteen days?

Mrs. Mink. Fourteen days, yes. I ask unanimous consent for that opportunity.

Chairman McKeon. No objection. So ordered.

Mrs. Mink. I also have two insertions in the record, which I would like to have at this point: the Advisory Committee on Student Financial Assistance, Dr. Juliet V. Garcia, and the interim report of the Distance Demonstration Project from the Department of Education. Thank you.

Chairman McKeon. No objection. So ordered. Put those in the record.

Thank you very much.

Mrs. Mink. Thank you very much.

LETTER SUBMITTED FOR THE RECORD BY RANKING MEMBER PATSY MINK, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE, FROM DR. JULIET GARZA, CHAIRPERSON, ADVISORY COMMITTEE ON STUDENT FINANCIAL ASSISTANCE, WASHINGTON, D.C. – SEE APPENDIX I

REPORT TO CONGRESS ON THE DISTANCE EDUCATION DEMONSTRATION PROGRAMS SUBMITTED FOR THE RECORD BY RANKING MEMBER PATSY MINK, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE – SEE APPENDIX J

QUESTIONS SUBMITTED FOR THE RECORD TO U.S. SECRETARY OF EDUCATION RODERICK PAIGE BY RANKING MEMBER PATSY MINK, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE – SEE APPENDIX K

RESPONSES SUBMITTED FOR THE RECORD BY U.S. SECRETARY OF EDUCATION RODERICK PAIGE TO QUESTIONS SUBMITTED BY RANKING MEMBER PATSY MINK, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE – SEE APPENDIX L

Chairman McKeon. And we will ask, also, if you do get questions submitted from other members of the panel, we would certainly appreciate it if you would respond to those. If you think of something else, in addition to your written statement and the comments you've made here today that you would like to get to us, we will put that in the record. As Mr. Isakson moves forward on this legislation, I'm sure he would be open to any of your comments and suggestions, and we appreciate your support and help in this.

LETTER SUBMITTED FOR THE RECORD BY CHAIRMAN HOWARD P. "BUCK" McKEON, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE, FROM SECRETARY OF EDUCATION RODERICK PAIGE, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, D.C. – SEE APPENDIX M

WRITTEN STATEMENT SUBMITTED FOR THE RECORD BY CHAIRMAN HOWARD P. "BUCK" McKEON, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE, FROM DR. RON CHENAIL, VICE PRESIDENT FOR ACADEMIC AFFAIRS, NOVA SOUTHEASTERN UNIVERSITY, FORT LAUDERDALE, FLORIDA – SEE APPENDIX N

With that, the Subcommittee stands adjourned.

[Whereupon, at 12:20 p.m., the Subcommittee was adjourned.]

APPENDIX A - WRITTEN OPENING STATEMENT OF CHAIRMAN HOWARD P. "BUCK" McKEON, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Statement of the Hon. Howard P. "Buck" McKeon
Chairman
Subcommittee on 21st Century Competitiveness

Hearing on H.R. 1992, The Internet Equity and Education Act of 2001
Wednesday, June 20, 2001
10:30 a.m.

Good Morning.

I want to welcome our witnesses today and thank them for taking the time to appear before the Subcommittee.

I also want to thank Representative Isakson for introducing H.R. 1992, the Internet Equity and Education Act of 2001. As Co-Chair of the Web-based Education Commission, he took the lead in discovering regulatory and statutory impediments to expanding access to higher education programs through the Internet, especially for non-traditional students.

In the early 1990s, Congress and the Administration enacted a number of reforms aimed at fighting abuses in our federal financial aid programs. Examples of these abuses included correspondence courses that offered little value to the student or recruitment practices in which "bounty hunters" were paid on a per-head basis to bring students in to a particular school. In order to end these abuses, Congress and the Administration may have ultimately imposed a straightjacket on all of higher education where handcuffs on a few bad actors would have sufficed.

The legislation we are considering today will remove the straightjacket while maintaining program integrity and implementing some of the recommendations of the Web- based Education Commission.

First, it will remove the burden of the "12-hour rule." Under the 12-hour rule institutions are required to keep literally hundreds of thousands of additional attendance records every year, just to show that their students attended certain types of work sessions. This legislation does not eliminate the safeguards that exist in the law under the "12-hour rule." Rather, it would hold programs for non-traditional students that do not meet on a standard quarter or semester basis to the same standard as their more traditional counterparts.

Second, it makes exceptions to the 50 percent requirement by allowing a limited number of institutions to offer more than 50 percent of their courses by telecommunications, or to serve more than 50 percent of their students through telecommunications courses. Eligible schools will have to be already participating in the student loan program and have student loan default rates of 10 percent or less for the three most recent years.

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Third, H.R. 1992 helps address some of the confusion regarding incentive compensation provisions. Under current law, an institution may not compensate an individual either directly or indirectly for the enrollment of students in an institution.

In one recent instance, an institution was fined $187 million for violating this provision. As a result, the institution was forced to close and to put approximately 9,000 students on the street.

We have been told that schools have little guidance in complying with this provision. In cases where guidance has been issued, it often conflicts with or contradicts guidance that has been issued to a different institution. In other words, schools truly don't know if they are in violation of the law or not. The legislation we are considering will allow reasonable business practices, while continuing prohibitions that prevent potential students from being taken advantage of.

It is rare when all sectors of higher education agree on an issue. However, there is a clear consensus that the incentive compensation issue needs to be fixed, and that it needs to be fixed sooner, rather than later.

Finally, distance education provides a tremendous opportunity to greatly expand access to postsecondary education to those who may otherwise be unable to participate. So, it would be a shame to waste this potential because of outdated notions and regulations.

This legislation provides a needed first step to ensuring that a postsecondary education is available to all who want to pursue it. At the same time, it does not diminish or undo needed integrity provisions in the law.

In closing, I want to thank the Ranking Minority Member of the Subcommittee, Ms. Mink, for her work on this legislation. This has been a truly bipartisan process.

As we go forward with this process, I look forward to working with all of my colleagues on both sides of the aisle to increase access to higher education for all Americans.

APPENDIX B - WRITTEN STATEMENT SUBMITTED FOR THE RECORD BY RANKING MEMBER PATSY MINK ON BEHALF OF CONGRESSWOMAN BETTY McCOLLUM, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE, FROM STEVE SHANK, CHANCELLOR, CAPELLA UNIVERSITY, MINNEAPOLIS, MINNESOTA

Written Testimony of

Steve Shank, Chancellor of

Capella University

Before the House Education & The Workforce

Subcommittee on 21st Century Competitiveness

On

H.R. 1992, the Internet Equity and Education Act of 2001

As Chancellor of Capella University, I welcome the opportunity to submit this written testimony for the Subcommittee's hearing record. I applaud Congressman Isakson and the original co-sponsors, Chairmen McKeon and Boehner, and Congressmen Goodlatte and Castle, for the introduction of H.R. 1992. I also thank the Subcommittee for holding this hearing and for its interest in moving this legislation expeditiously. In this testimony, I briefly review the history of Capella University and its mission, but focus primarily on how current federal law and regulations limit the potential of distance education to expand access to higher education.

Founded in 1993 in Minneapolis, Minnesota, Capella is an online university offering nationally its undergraduate and graduate degree programs in business management, information technology, education, and the behavioral sciences. The University is accredited by the Higher Learning Commission of the North Central Association, one of the six regional accrediting bodies, and is a charter participant in the Commission's Academic Quality Improvement Project (AQIP). Capella is also a participant in the U.S. Department of Education's Distance Education Demonstration Program.

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Central to Capella's mission as an online institution of higher education is to extend educational access to adults who are interested in furthering their education, but who might not otherwise be able to do so because of their job or family commitments. Most of our 3,000 degree seeking students are age 25 or older. Our students are taught in a "virtual" classroom, a structured learning environment with courses led by faculty over a 12-week period. These courses are designed to provide our students with the flexibility to participate at hours convenient to their work and family schedules. As with any accredited institution of higher education, we assess our students' performance based on a required demonstration of learning in the form of papers or examinations. Our online degree programs have a 70% successful completion rate.

Approximately 50% of Capella's students use financial aid to further their education, including the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA).

As a result of our participation in the Title IV programs and the experience gained in the Department's Demonstration Program, Capella is concerned that several provisions of the HEA and Department of Education regulations unduly limit access to effective distance education programs. Of particular concern are the breadth and uncertainty of the incentive compensation prohibition, the 50% limitations on telecommunications courses and students, and the 12-hour rule. Capella University is heartened by both the work of the Web Based Education Commission and the introduction of H.R. 1992. The remainder of this testimony focuses on these three areas of concern and whether the changes contained in H.R. 1992 should be refined to better encourage the availability of distance education.

Incentive Compensation

In its 1992 amendments to the HEA, Congress included, as an eligibility condition, a provision to prohibit institutions of higher education that participate in Title IV financial aid programs from paying a commission, bonus, or other incentive compensation based directly or indirectly on success in securing enrollments or financial aid to any person or entity involved in student recruiting or the awarding of financial assistance. As the Web Based Commission indicated in its report, the incentive compensation prohibition was enacted to protect students against abusive recruiting tactics and to maintain the integrity of the federal financial aid programs. Clearly, these are legitimate and important objectives. We believe, however, that this prohibition should be fine-tuned, particularly in light of the Department of Education's interpretation and application of it, to keep the prohibition focused on its legitimate purposes. Capella agrees with the sponsors of H.R. 1992 that amendment of this provision is necessary.

As a result of the broad language in this statute, the Department of Education's application of the incentive compensation prohibition has exceeded Congress' original intent and has had harmful effects on the development of distance education and the administration of higher education in general. At a time when access to education should be at an all time high due to innovation and application of web technologies, colleges and universities are unrealistically constrained in their ability get the word out about educational programs to students and sponsoring organizations. The Department's broad interpretation of the prohibition has muddied the waters for colleges and universities interested in providing their employees, including those involved in marketing and recruitment, with salaries and bonuses that, while based in part on performance, are also standard forms of payment evident in any workplace environment. The

Department has reached beyond the prohibition's original intent, at times inconsistently, particularly through its attempt to interpret the term "indirectly" in the Act and regulations.

For example, the Department has found that the prohibition extends to a senior manager in a corporation operating multiple secondary institutions, even though that person only hired and supervised the admissions employees for the corporation's schools and was not himself directly engaged in recruitment activities. In general, the language of this prohibition and the Department's interpretive practice is so broad and vague that it is impossible for an educational institution to be confident that it is in compliance with the law. The question whether school employees can be compensated simply for generating inquiries is similarly murky. The Department took the position that such compensation was prohibited in 1995, reversed itself in 1999, and partially re-reversed itself a year later. How the subject would be treated in the Internet environment, where compensation would be based upon potential students' clicks, is even more uncertain, and certainly not envisioned by Congress in 1992. As the Web Based Commission found, the current prohibition on incentive compensation has been extended in a manner particularly harmful to the recruitment of students through the Internet. And, to further complicate matters, the Department's determinations often come in the form of responses to interpretive requests and "Dear Colleague" letters that are difficult to access comprehensively. The Department's practices are such that the Department will not provide clarification of these rules in a manner in which an educational institution can feel safe in relying on the Department's advice.

By removing the term "indirectly" from the current provision, H.R. 1992 takes an important first step in refocusing the incentive compensation prohibition on its original and legitimate purpose. Moreover, by creating a new section of the statute to address incentive compensation, Congress, it appears, would no longer make this a condition of eligibility to participate in the Title IV programs and, instead, would allow appropriate sanctions to be levied for violations. If so, this too is a positive step. However, even with those changes, considerable interpretive latitude would be left.

Accordingly, Capella urges the bill's sponsors and Congress to consider the inclusion of additional, specific safe harbors in the legislation to address the problems outlined above. These safe harbors should include exceptions for:

1. contractual arrangements for advertising and inquiry and lead generation activities, including payments to Web portals and other online services that bring prospective students to the attention of a school;
2. compensation paid to persons or entities that secure commitments from employers to provide financial support for educational enrollment by their employees;
3. compensation paid to managers and executives who do not engage in recruiting or admission activities themselves, but may supervise those who do;
4. employee, senior manager, and owner participation in the profits of the institution, or the award of bonuses, stock options, or stock based on the financial performance of the institution.

The 50 Percent Rules

The current "50 Percent Rules" require institutions participating in the Title IV programs to offer at least 50 percent of their instruction in a classroom-based environment. The original intent when Congress enacted the 50 Percent Rules was to ensure against fraud in the correspondence school industry. This provision of HEA, however, has had the unintended effect of disqualifying exclusively online institutions of higher education from participating in federal financial aid programs. But for the waivers available in the Department's Distance Education Demonstration Program, Capella would not be able to offer federal financial aid to the working adults and other students who need it. These Rules, in effect, discriminate against students who are unable, for professional or family reasons, to physically attend traditional institutions of higher learning, but who seek to advance themselves and their careers through rigorous but flexible online learning.

H.R. 1992 addresses the problems presented by the 50 Percent Rules by eliminating their application to those institutions that participate in the Title IV loan programs and that maintain a cohort default rate of less than 10 percent over each of the most recent three-year period for which data is available. While Capella understands that the proposed legislation is intended only to take limited steps in anticipation of a more comprehensive review and possible revision in the next reauthorization, we are concerned that the bill would have unintended and anomalous consequences.

First, the bill would prevent a new institution not already participating in the loan programs from using the exemption, and even relatively new institutions would likely remain subject to the 50 Percent Rules because of their inability to present three years of data on default rates. As the Committee is aware, there is a delay of several years between graduation dates and the availability of default data on students. Many graduating students also defer their payments on aid beyond the grace period automatically granted. A new institution, therefore, would not be able to provide three years of default rate data for several years after its establishment. Yet, notwithstanding its nonparticipation in the Title IV programs on the date of enactment or its lack of a default rate history, such an institution might be among the most innovative in providing access to quality education and training. This is especially so in the fast developing area of online education. It seems arbitrary to exclude such a school from the exemption. The impact of this approach may be lessened if institutions could continue to use Demonstration Program waivers, but this should be clarified. Second, an institution may experience a one-year increase in default rates for anomalous reasons and under H.R. 1992 be disqualified from the exemption. If the exemption were lost, the institution would then become ineligible. To prevent such a draconian result, a three-year moving average would be a better approach.

Finally, the Committee should carefully consider whether default rates are the best proxy for determining that an exemption is appropriate. Default rates often vary due to factors unrelated to the educational quality of the institution, such as the state of the national economy. In recent years, accrediting agencies have made substantial progress in developing standards and processes to evaluate distance education. It would be appropriate to allow review by an accrediting agency which has been recognized by the Secretary of Education and determined to have distance education appropriately within the scope of its recognition to provide an alternative means for deciding whether to apply the 50 Percent Rules.

The 12-Hour Rule

When Congress amended the HEA in 1992, it included a provision defining an academic year that required a minimum number of weeks of instruction. Congress did not, however, provide statutory guidance as to how to define a week of instruction, especially for students enrolled in programs offered in nontraditional time segments. Without statutory guidance, the Department of Education established requirements for programs not offered in standard terms. These regulations define a week of instructional time to mean 12 hours of "regularly scheduled instruction, examinations, or preparation for examination." As recognized by the Web Based Commission, this provision inhibits the innovation and flexibility available in distance education.

Capella thus supports the clarification in H.R. 1992 which would preclude the 12-hour rule and adopt a single definition of a week of instruction. Again, however, we believe that some refinements are necessary. To achieve its aim, the single definition should apply not only to standard and nonstandard term programs, but also to non-term based programs (i.e. programs that have variations in course length and variable course start and finish dates that meet the needs of students). We also believe that activities that should count toward meeting the week of instruction requirement should include technology aided faculty-student interaction and other required educational activities that engage the student in pursuit of defined learning outcomes. With these modifications, this provision will allow online institutions the flexibility to provide a quality education to the growing body of students who face obstacles to obtaining an on-site education.

Conclusion

In today's service and technology-based economy, advanced education and access to lifelong learning tools are becoming increasing important. Adults aged 25 and older represent

43% of higher education enrollments. We estimate that there are approximately 75,000 students currently enrolled in online degree programs nationally, and this number will grow beyond 750,000 by 2005. With this dramatic potential for growth in distance education, it is essential that Congress and the Administration address the regulatory obstacles to the fulfillment of the promise of distance education. Capella University applauds the sponsors of H.R. 1992 for its introduction and looks forward to working with this Subcommittee and the full Committee in pursuit of its enactment.

APPENDIX C - WRITTEN OPENING STATEMENT OF VICE CHAIRMAN JOHNNY ISAKSON, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Statement of the Honorable Johnny Isakson
Vice Chairman
Subcommittee on 21st Century Competitiveness

Hearing on H.R. 1992, The Internet Equity and Education Act of 2001
Wednesday, June 20, 2001
10:30 a.m.

Good Morning.

Thank you all for coming today, and for contributing to our hearing. As the author of H.R. 1992, The Internet Equity and Education Act of 2001, I value your opinions on the bill and look forward to working with you to expand access to higher education through distance learning.

I want to thank Chairman McKeon for holding this hearing today, and for his support of this legislation. I also want to thank the Subcommittee's Ranking Member, Ms. Mink, for the bipartisanship she has shown, and for her willingness to work with me to expand the educational opportunities available to every American.

The Web-based Education Commission, on which I served as Vice Chairman, set out to discover how the Internet was being used to enhance learning opportunities for all learners regardless of age. We heard testimony from a number of experts and witnessed several demonstrations of how to successfully use technology in education. Last fall, the Web-based Education Commission issued its report, "The Power of the Internet for Learning."

Throughout the report, the Commission makes several recommendations for improving and expanding the use of the Internet so that all learners may have greater access to educational opportunities. One specific recommendation made by the Commission was to "[r]evise outdated regulations that impede innovation and replace them with approaches that embrace anytime, anywhere, any pace learning." H.R. 1992, the Internet Equity and Education Act, addresses this recommendation as it applies to postsecondary education.

The Commission identified specific areas that should be addressed immediately if we truly are to embrace anytime, anywhere and any pace learning. H.R.1992 provides a limited expansion of internet-based educational opportunities for students. By the next reauthorization of the Higher Education Act we will know if our efforts at expansion were successful and if greater expansion is warranted.

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The first provision addressed in this legislation deals with on-line education programs. As a result of past concerns regarding correspondence education, the Higher Education Act limits the number of courses an institution may offer and the number of students an institution may enroll in such courses and remain eligible to participate in the title IV student aid programs. In addition, the Higher Education Act limits the amount of aid a student enrolled in distance education courses delivered via telecommunications may receive if the institution offers half or more of its courses by correspondence or telecommunications. These provisions hinder innovation and do nothing to promote the concept of anytime, anywhere, any pace learning. However, with modest changes to the law, we can lift these rules and allow greater innovation and flexibility that will undoubtedly expand educational opportunities for all learners, without increasing risks to program integrity. Under this legislation, postsecondary institutions that are already participating in the federal student loan programs with student loan default rates under 10 percent over the three most recent years would face no limit to the number of courses they can offer over the Internet, or the number of students they can teach through telecommunications.

The second provision addressed in this legislation is the repeal of a regulation known as the 12-hour rule with respect to non-standard term programs. This rule governs the amount of "seat-time" students must spend in class per week, and hinders innovation and flexibility in the offering of academic programs as a result of the enormous and expensive administrative burdens it imposes on colleges and universities. In the case of one university offering a nontraditional, non-standard term program, this rule translates into 370,000 reports each year that must be prepared, approved by faculty and stored in a way that they are available for inspection. These reports fill 20 four-drawer file cabinets every year. Who is going to review and read these mind-numbing reports? My guess is that no one is actually going to review or read these reports, but the government continues to require that the reports be written and retained. Under these circumstances, why would any college try to offer innovative and flexible academic programs specifically designed to expand educational opportunities? This regulation clearly fits the Commission's call for revising outdated regulations that impede innovation. It needs to be repealed. The bill I am introducing today repeals this outdated regulation and simply treats non-standard term programs the same as standard term programs with respect to the definition of a week of instruction.

The final provision addressed by the legislation would clarify the incentive compensation requirements currently found in the law. This provision would return the ability to reward employees appropriately for their job performance to postsecondary institutions, as long as the employees are not directly recruiting students.

This legislation provides much needed changes to the Higher Education Act that will allow all learners to take the fullest advantage of what the newest technologies can provide for their education. I thank the Chairman of the subcommittee, Mr. McKeon, and Ranking Minority Member of the subcommittee, Ms. Mink, for their help in crafting this legislation, and I look forward to working with them as we move forward.

APPENDIX D - WRITTEN STATEMENT OF STANLEY O. IKENBERRY, PRESIDENT, AMERICAN COUNCIL ON EDUCATION, WASHINGTON, D.C.

TESTIMONY BY

STANLEY O. IKENBERRY

PRESIDENT
AMERICAN COUNCIL ON EDUCATION

BEFORE THE

COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS
U.S. HOUSE OF REPRESENTATIVES

JUNE 20, 2001

IN REGARD TO

H.R. 1992
THE INTERNET EQUITY AND EDUCATION ACT OF 2001

Testimony By Stanley O. Ikenberry
President, American Council on Education
Before The Committee on Education and the Workforce
June 20, 2001
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Mr. Chairman, and members of the Committee, thank you for this opportunity to testify on behalf of H.R. 1992, the Internet Equity and Education Act of 2001. The American Council on Education, which represents 1,800 two- and four-year public and private college and university members, supports this legislation. ACE appreciates the contributions that Mr. Isakson and others made to the Web Commission, and we view H.R. 1992 as a step that must be taken to allow the Higher Education Act to catch up with the enormous changes taking place in higher education and the innovations in its delivery.

In 1993, while I was president of the University of Illinois, our National Center for Supercomputer Applications developed MOSAIC, the first Web browser. This breakthrough led to the rapid growth of the World Wide Web – growth that has since been phenomenal. Note just these few statistics:

- Nationally and internationally, the number of computers connected to the Web grew from 1 million in 1992, to 60 million in mid-1999.

- The percentage of U.S. households with access to the Internet has increased from 2 percent in 1994, to 26 percent in 1998, and now stands at 33 percent.

- Two out of three Americans has access to the Internet somewhere, be it at home, at work, at school, or elsewhere.

As Vannevar Bush noted more than 50 years ago, "The world has arrived at an age of cheap, complex devices of great reliability; and something is bound to come of it."

What has come of it for higher education is a profound change in the educational landscape. Technology is indeed transforming our colleges and universities, and leading us into what could be the most exciting and challenging period in the history of higher education. The World Wide Web provides an alternative means for the delivery of courses and services, and it provides learners with an extraordinary range of options. Distance education and on-campus instruction are converging, with online delivery systems being employed for distant, commuting, and residential students. The bricks and mortar of the past have embraced the clicks and mortar of the future.

Distance education is not new. It dates to the days of the Pony Express. Since 1890, an estimated 100 million Americans have engaged in distance education – mostly through correspondence courses. More recently, there has been steady growth in distance education course offerings and enrollments at our colleges and universities. Again, just a few statistics:

- In 1995, 33 percent of two-year and four-year colleges offered distance education courses. By 1998, that had grown to 44 percent.

- Between 1995 and 1998, the number of public four-year institutions offering distance education courses grew from 62 to 79 percent.

- The number of private four-year colleges engaged in distance education nearly doubled between 1995 and 1998, from 12 to 22 percent.

- Thirty-five states have created virtual universities or other statewide organizations.

- Distance education courses and enrollments are growing faster than the number of institutions that are offering distance education – the number of courses offered by two- and four-year institutions increased from 24,730 in 1995 to 52,270 in 1998;

- And enrollments also doubled, from 753,640 in 1995 to 1,632,350 in 1998.

Yes, distance education is growing, but it is growing slowly – this is not a wildfire. Colleges are cautious institutions by nature. Across the country, colleges and universities have taken different approaches to establishing distance education organizations. Some of our campuses, like the University of Maryland's University College and Temple University, have established an extensive set of online course offerings through for-profit subsidiaries. Others, such as the University of Illinois and UCLA, have created units that are extensions of the current college or university organization.

There is still much to learn about student learning outcomes, governance issues, intellectual property rights, economic feasibility and sustainability, quality, accountability, and a host of other complex issues related to distance learning. Still, the kind of experimentation that is occurring must be supported by policies that preserve the integrity of the federal student aid system, but do not unduly constrain innovation.

Given the enormous possibility of distance education, it is essential that we determine how to make federal student aid programs available to students who are using this new and exciting learning option. But, we must do so carefully. In the late 1980s and early 1990s, many of the worst student loan abuses seemed to be concentrated in distance education programs. Many of the limitations and restrictions on distance education in federal student aid policy were created to remedy these abuses.

No one, least of all traditional colleges and universities, wants to recreate the problems that damaged the student loan program so badly and marred the public's view of higher education.

But distance education will only continue to expand and we would be foolish to not look for ways to let learners, especially those for whom a traditional classroom setting is impracticable or unavailable, benefit from this powerful tool. If we fail to address this issue, we will be creating an access issue for students who must rely in part on federal aid to achieve their education goals.

The bill introduced by Congressman Isakson is based on the excellent work of the Web Commission, chaired by then-Senator Bob Kerrey. Senator Kerrey is now President of the New School for Social Research and a member of ACE.

This bill would address three specific problems in distance education that relate to participation in Title IV funding. First, the bill would remove the 50 percent limitation that requires that no more than 50 percent of an institution's courses be conducted via distance education.

Second, the bill would relax the incentive compensation provision that makes it impossible to pay a bonus to any official engaged in admissions and financial aid. Equally important, changing the incentive compensation provisions will make it possible to use standard business practices with respect to paying third party information technology companies that are increasingly a part of student recruitment and admissions.

Third, the bill will eliminate an obsolete regulation called the 12-hour rule that, for some institutions of higher education, establishes a federal standard for classroom instruction. Not only is this particular law obsolete, it is incomprehensible. I didn't understand it when I came to DC and I will leave town without a glimmer of an understanding.

But the fact that the 12-hour rule is obsolete and incomprehensible is no barrier to enforcement. Last year, the Department of Education fined one college more than $6 million for violating this rule. We strongly support the elimination of this provision. Our colleges have moved away from standard terms to non-standard terms and non-term courses in an effort to serve non-traditional students and adult workers through weekend colleges and the like. In such an environment, 12 hours of seat time makes little sense - if it ever did - as a proxy for program quality.

While we are anxious to see these changes - because we think that they will make distance education more viable for students and institutions - we do not want to see a repeat of the fraud and abuse that once threatened the student aid programs.

Therefore, we think the fact that these provisions will sunset with the rest of the Higher Education Act on September 30, 2002 is an excellent interim step. It will ensure that Congress carefully reviews these provisions as part of reauthorizing the underlying legislation.

To further aid that review, we strongly recommend that you include, as part of this law, a requirement that the Department of Education commission a third-party assessment of the impact of these changes on students, institutions, and, most importantly, on the integrity of the student aid programs. In this fashion, potential problems can be systematically identified and corrected as part of the reauthorization.

We also encourage you to consider one other issue. H.R. 1992 would waive the 50 percent rule for only those schools with default rates at or below 10 percent. This means that some schools with excellent distance education programs may find themselves precluded from taking advantage of this new flexibility. Community colleges that have low student loan volume are especially at risk of finding themselves just on the other side of that 10 percent line.

Given this, we encourage the Committee to give the Department of Education authority to develop a waiver that can be granted to schools that might find themselves just above that 10 percent default threshold – provided that the Department concludes that the school is doing an otherwise satisfactory job administering the student aid programs.

One key question that needs to be answered is why make these changes now – just two years before we start to reauthorize the Higher Education Act? I think there are three basic reasons. First, despite widespread recognition of problems with all three provisions, the Department has been unable or unwilling to make changes as part of the regulatory process. Indeed, as part of negotiated rulemaking, the Department considered changes in incentive compensation but decided, at the last minute, not to proceed. When the regulatory process fails on an important matter, legislative action becomes the only alternative.

Second, by making the changes now, Congress will have two years to monitor the impact of the amendments and can easily make any necessary mid-course corrections as part of the coming reauthorization.

Third, we need to make the changes now because distance education is changing the postsecondary education landscape so quickly. If changes are not made now, we will have to wait until after the Higher Education reauthorization and, most likely, until after the rulemaking process that follows a reauthorization. This could easily mean a delay of four or five years.

In the rapidly changing world of distance education, four or five years is a lifetime. Not changing the law now means that institutions find themselves constrained in what they can offer students, and students will find their educational opportunities constrained by obsolete rules and regulations. We think this is a huge price to pay.

The higher education community did not propose these changes or other changes in the "gatekeeping" provisions in the last reauthorization for two reasons. First, we lacked the information and the vision to foresee where the changes in technology and the growth of the World Wide Web would lead. And second, we wanted to safeguard the integrity of Title IV student aid. With better information in hand, we now know that our institutions are doing remarkable things to improve access to education and the quality of education that they deliver by making the best use of new technologies. The time has come to loosen some of the strictures that inhibit these valid educational ventures. Given the careful analysis this topic has received from the Web commission and the costs of not acting, we believe Congress should change the law this year.

Committee on Education and the Workforce

Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: DR. STANLEY O. IKENBERRY

1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the Committee). Yes [✓ No]

2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1998:

(see attached)

3. Will you be representing an entity other than a government entity? [✓ Yes] No

4. Other than yourself, please list what entity or entities you will be representing:

———

5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4:

———

6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1998, including the source and amount of each grant or contract:

———

7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list: Yes [✓ No]

Signature: Stanley Ikenberry Date: June 19, 2001

Please attach this sheet to your written testimony.

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AMERICAN COUNCIL ON EDUCATION
FEDERAL GRANTS AND CONTRACTS SCHEDULE 1998 - 2001

Agency		FY 1998 Amount Received		FY 1999 Amount Received		FY 2000 Amount Received		FY 2001 Amount Awarded
Federal Bureau of Prison	$	242,826	$	378,580	$	321,779	$	388,347
Department of Defense	$	1,804,227	$	1,825,396	$	2,167,457	$	2,430,324
National Endowment for the Humanities	$	33,076	$	-	$	-		-
Department of Education	$	529,746	$	755,950	$	875,583	$	899,494
USIA	$	-	$	-	$	40,941	$	-
USAID	$	897,386	$	1,397,655	$	2,041,489	$	5,715,524
TOTAL	$	3,507,341	$	4,357,581	$	5,447,239	$	9,231,689

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DGR 6/19/2001

APPENDIX E - WRITTEN STATEMENT OF LORRAINE LEWIS, INSPECTOR GENERAL, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, D.C.

Statement of
Lorraine Lewis
Inspector General
Department of Education

Before the
Subcommittee on 21st Century Competitiveness
Committee on Education and the Workforce
United States House of Representatives

June 20, 2001

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to discuss issues concerning H.R. 1992, Internet Equity and Education Act of 2001, and your desire to increase access to postsecondary education while maintaining the integrity of our Student Financial Assistance (SFA) programs. My testimony today will focus on the areas addressed in the legislation: 1) limitations on telecommunications and correspondence education (the "50% rule"); 2) requirements for the amount of instructional time (the "12-hour rule"); and 3) the prohibition on incentive compensation. In particular, I will highlight questions that we believe should be considered before changes are made.

There have been great advances in technology and in the growth of the Internet since the major amendments to Title IV of the Higher Education Act (HEA) in 1992. These developments warrant reconsideration of the manner in which the Federal government finances students who pursue distance learning, as well as other non-traditional programs. Congress initiated this process in 1998 when it authorized the Distance Education Demonstration Program, and H.R. 1992 continues this process. The key issue is how to make changes that encourage innovative educational program delivery while ensuring accountability of taxpayer dollars and preserving the integrity of the SFA programs.

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It is important that the policy decisions of the future be informed by the lessons of the past. Our analysis is guided by the principle that all students should receive an appropriate amount of instruction to justify the amount of SFA funds awarded, through traditional, as well as non-traditional methods.

LIMITATIONS ON TELECOMMUNICATIONS AND CORRESPONDENCE EDUCATION

In the 1980s and early 1990s, our audits and investigations identified numerous problems with institutions offering correspondence-only programs that resulted in many schools being terminated from the SFA programs. The correspondence programs functioned by providing students lessons through the U.S. mail, students completing the lessons and returning them by U.S. Mail. These programs presented unique oversight difficulties for the Department, including determining the appropriate program length due to a lack of scheduled instructional hours. Excessive awards of SFA funds for these types of programs were common. Thus, the 1992 amendments to the HEA established the current 50% limitations on an institution's courses being offered through correspondence and 50% of the students enrolled in these courses. Telecommunications courses are considered to be correspondence courses if the sum of the telecommunication courses and other correspondence courses equal or exceed 50% of total courses offered.

We believe that in revisiting that limitation, certain policy issues should be considered.

1) **Should the criteria for recognition of accrediting agencies require that they have specific standards for evaluating the quantity and quality of distance education programs?**

The Department is required to rely on recognized accrediting agencies as experts for assessing the quality of education provided by member schools. Their standards must provide for, among other things, an evaluation of an institution's academic practices, academic calendars, measures of program length, and compliance with Title IV responsibilities.

We performed a review of the management controls for distance education by accrediting agencies and state agencies. Our report titled, "Management Controls for Distance Education at State Agencies and Accrediting Agencies," (ACN: 0990030, September 2000, which is located at http://www.ed.gov/offices/OIG/Areports.htm) shows that inconsistencies exist in how these oversight agencies have established standards to evaluate the quality and quantity of education offered through distance education.

We were provided information from 29 accrediting agencies and focused on distance education provided by computer transmission (through the Internet). We found that:

- Eleven agencies used the same requirements and procedures that they used for programs and courses offered through traditional classroom methods.
- Sixteen agencies supplemented their requirements and procedures for traditional classroom methods, with additional criteria and procedures for distance education.
- Two agencies were developing or reviewing specific requirements.

Both state agencies and accrediting agencies provided opinions and comments on issues related to distance education. They indicated a high level of concern regarding programs offered through computer transmission such as how to evaluate and measure curricula, educational outcomes, student support services, faculty, satisfactory academic progress, and availability of information about the institution.

The state agencies were also inconsistent in establishing standards for distance education. Given what we found in this review, Congress should consider whether to require that recognized accrediting agencies have specific standards for determining the quality and quantity of education provided through distance education.

2) What is the fundamental difference between correspondence courses and certain courses offered through telecommunications?

A popular mode for providing distance education is the Internet, which qualifies as telecommunications. The Internet provides for many options for the delivery of instruction, ranging from simply providing lessons to students electronically, to interactive communication with an instructor. Amending the statute to provide that telecommunication courses will not be considered correspondence courses, provided the institution has a cohort default rate below 10% for the past three years, raises a question. If an institution provides lessons via the Internet, to be completed by the student in web sessions or returned via electronic mail, how is this any different than correspondence courses provided through the U.S. Mail?

Students enrolled in correspondence courses are considered only half-time students for awarding SFA funds, while students in telecommunication courses are considered full-time students. Thus, the students are eligible for different amounts of SFA funds.

3) Should the cost of attendance be calculated in the same manner for distance education programs as it is for residential programs?

Institutions must establish the "cost of attendance" (COA) budget in calculating the amount of eligible SFA awards. The COA as defined by the HEA primarily includes:

- Tuition and fees normally assessed a student including the costs for rental or purchase of any equipment materials, or supplies.
- An allowance for books, supplies, transportation, and reasonable miscellaneous personal expenses, including a reasonable allowance for the documented rental or purchase of a personal computer.

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- An allowance for room and board costs incurred by the student which shall be an allowance for (a) students without dependents residing at home with parents, (b) students without dependents residing in institutionally owned or operated housing, and (c) for all other students an allowance based on the expense reasonably incurred for room and board.
- An allowance for dependent care for students with dependents.

For students engaged in correspondence courses, the COA is limited to tuition and fees, and, if required, books, supplies, and travel. For students enrolled in telecommunications programs, there is no similar limitation for determining COA. Students in telecommunications programs and residential programs can be eligible for the same amount of SFA awards based on the same COA. For a student enrolled in telecommunications programs and receiving education through the Internet, the need for a COA budget that includes an allowance for room and board should be examined.

REQUIREMENT FOR AMOUNT OF INSTRUCTIONAL TIME

The HEA amendments of 1992 mandate that an academic year, for undergraduate programs, must be a minimum of 30 weeks of instructional time in which a full-time student is expected to complete at least 24 credit hours. The Department faced difficulty in applying this requirement to programs measuring student progress in credit hours but not using a semester, trimester, or quarter system. Thus, the 12-hour rule was published in regulation to assure consistency in the amount of instruction between programs for the amount of SFA funds awarded. The assumption is that a full-time student attempting 12 credit hours in a semester would have 12 hours of scheduled instruction per week.

In revisiting this requirement, the following issues should be considered.

1) Should the term "instruction" be defined?

Neither the Higher Education Act nor the implementing regulations define what constitutes instruction. There are many different delivery methods for instruction, such as the traditional residential term-based programs; residential programs not offered on a semester, trimester, or quarter system; correspondence courses; telecommunications programs; and independent study. There is no specificity in what can be included as instruction for determining an institution's academic year and credit hours for the awarding of SFA funds. Providing a statutory definition of instruction would help clarify for the Department and the higher education community the appropriate amount of SFA awards for various methods of education.

2) Should student study groups be included as instruction?

Our audit report titled "University of Phoenix's Management of Student Financial Assistance programs," (ACN: A0970022, March 2000, which is located at http://www.ed.gov/offices/OIG/Areports.htm) found that the institution's programs offered much less classroom education than programs provided by traditional term-based institutions. This institution without standard terms (semesters, trimesters, or quarters) used small student study groups of four to six students where there was no requirement for an instructor or other institutional representative to be present at the study groups, the groups were not scheduled for a particular time or place by the institution, and the groups were not required to occur at an institutional facility. The institution defined the study groups as instruction, and they were included along with classroom instruction to meet the minimal number of instructional hours required by the 12-hour rule and the minimal academic year requirement.

For institutions providing traditional residential classroom education in semesters, generally a student would be provided three hours of scheduled classroom instruction for 15 weeks, or 45 hours of classroom instruction for a three-credit hour course. This institution, offering a mix of classroom instruction and student study groups, provided only four hours of classroom instruction for a five-week period for a three-credit hour course. This resulted in only 20 hours of classroom instruction. Congress should consider whether it intends to allow institutions to award the same amount of SFA funds for providing 20 versus 45 hours of classroom instruction. Similar issues arise in measuring the amount of distance education via telecommunications.

PROHIBITION ON INCENTIVE COMPENSATION

Prior to 1992, the HEA contained a prohibition on the use of incentive compensation based on success in securing enrollments or financial aid in the program eligibility section for the Federal Family Education Loan program. In the 1992 amendments to the HEA, Congress expanded the prohibition to all SFA programs and placed it under the Program Participation Agreement section of the HEA. The prohibition was designed to protect students from the high-pressure tactics used by recruiters to enroll students in programs for which they may not have been prepared or did not want. The students were saddled with unwanted debt, at increased cost to the taxpayers.

Any modification to this restriction raises the following issues.

1) **In removing the term "indirectly" from the current provision, what type of activity currently not allowed does Congress intend to allow?**

Recruiting activities may be varied. They may encompass recruiting visits to high schools, telephone calls, and similar communications aimed at recruiting prospective students, personal interviews of prospective students, tours for prospective students, and obtaining certain information from students. What the law prohibits is basing compensation solely on the number of students that actually enroll as a result of those activities.

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Congress should clarify the types of recruiting activities and compensation plans permitted, and those that will remain unallowable, under this proposal.

2) What is intended by including a prohibition on "non-salary" payments?

The bill adds the term "non-salary" to the types of incentive payments that would not be allowed. This language may be interpreted to permit institutions to make salary adjustments monthly or even weekly based on prior success in securing enrollment.

In providing guidance to specific institutions, the Department has stated that permanent salary increases based on factors relating to enrollment are permissible, but cannot be made more frequently than annually and must be based on merit factors other than those directly relating to enrollment. Without some clarification to the definition of "non-salary," incentive payments based on success in securing student enrollment could be labeled as salary and permitted under this bill. Congress should clarify its intent.

3) What contractual arrangements will be covered by the ban on incentive compensation?

The legislation continues to ban an institution from paying an entity based on enrollment success. The bill limits this ban to entities "directly engaged in student recruiting or admission activities." Congress should clarify what types of contractual arrangements would be covered by the ban on incentive compensation.

Thank you for the opportunity to raise these important issues as you begin your consideration of H.R. 1992. This concludes my statement. I would be happy to answer any questions that the Subcommittee may have.

APPENDIX F - WRITTEN STATEMENT OF RICHARD J. GOWEN, PRESIDENT, SOUTH DAKOTA SCHOOL OF MINES AND TECHNOLOGY, RAPID CITY, SOUTH DAKOTA

Statement in Support of HR 1992, The Internet Equity and Education Act of 2001

Dr. Richard J. Gowen
Commissioner, Web-Based Education Commission and
President of the South Dakota School of Mines and Technology
June 20, 2001

The report of the Web-Based Education Commission to the President and the Congress of the United States contains the recommendations that the 16-member bipartisan Commission found to be of critical importance for the use of the Web to improve education. These recommendations were developed as the result of testimony and interactions with hundreds of Americans throughout the year 2000. The Commission found the Web to have the potential to provide true educational equality for all citizens by enabling each person to learn and develop to the full extent of their individual ability.

The Commission also heard concerns about a range of issues that limit the ability to achieve the educational potential of the Web. Among these issues were concern for the regulations that initially were intended to protect students in post-secondary education, but now have the effect of limiting the access of students to education available through the Internet and other Web-based education. Regulations designed to prohibit the use of federal financial aid for low-quality correspondence programs limit today's students from accessing high-quality programs offered through the Internet.

According to some estimates, only 16 percent of today's college students meet the old stereotype of attending full-time, enrolling right after high school, and living on campus.[1] Course content comes not just from a textbook or materials passed out in class by the teacher,

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but from many sources, in many formats, and even created by the students themselves. Time, institution, and location no longer form the defining elements of education.

FEDERAL STATUTORY AND REGULATORY BARRIERS

The federal government has struggled to establish a framework within statute and regulations that accommodates the promise of the Internet for post-secondary education while promoting access and ensuring accountability. The effort has had mixed results.

Three specific federal issues were brought to the Commission's attention: the "12-hour rule," the "50 percent rule," and the federal prohibition on providing incentive compensation in college admissions.

The 12-hour Rule

When Congress amended the Higher Education Act in 1992, it added a specific definition of an academic year that prescribed at least 30 weeks of instructional time. Full-time undergraduate students in traditional academic programs are expected to complete at least 24 semester hours or trimester hours (or 36 quarter hours, or 900 clock hours) in that time period to be eligible for the maximum amount of financial aid under the Title IV program.

However, the law was silent on establishing an academic workload requirement for students enrolled in Title IV eligible programs offered in a nontraditional time segment. To deal with this, the U.S. Department of Education developed regulations to implement the statutory definition of an academic year, including establishing full-time workload requirements for

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students enrolled in programs offered in nontraditional time segments. In 1994, the Department issued formal regulations defining a week of instructional time to mean 12 hours of "regularly scheduled instruction, examinations, or preparation for examination" for programs that are not offered in standard terms.

The 50 Percent Rule

Likewise, the "50 percent rule" requires Title IV-eligible institutions to offer at least 50 percent of their instruction in a classroom-based environment. The basis of this rule is to ensure that a student is physically participating in an academic course of study for which he or she is receiving federal student financial assistance. In enacting this provision in the 1992 Higher Education Amendments, Congress sought to address concerns about fraud and abuse within the correspondence school industry.

While understanding that physical seat time may not be an appropriate measure of quality for the increasing proliferation of online distance learning programs, the Department views these two rules as important measures of accountability that should not be eliminated or replaced unless there is a viable alternative.

The Commission was encouraged by public, independent, and proprietary colleges and universities to address the elimination of the 12-hour rule and the 50 percent rule or, at a minimum, a moratorium on their enforcement.

These institutions told the Commission that the rules simply don't make sense in light of online distance education and the growing use of the Internet for instructional delivery.

The Commission received testimony that the current student financial aid regulations discourage innovation rather than provide creative incentives for students and institutions to experiment with new distance education methodologies offered in education anytime, anyplace, and at any pace. If a student cannot travel to an institution and participate in face-to-face instruction, that student may only qualify for reduced financial aid. The practical impact of the current financial aid regulations is to give substantial preference to the mainstream educational experience.[2]

In seeking correctly to halt abuse in the student financial aid program, these rules may, in fact, have the unintended effect of curtailing educational opportunity among thousands who seek financial aid for college, but who do not otherwise fit into the mainstream definition of a college student. Consider these statistics:

- The span from 1970 to 1993 saw a 235 percent growth in students older than age 40.
- Over the same time period, the traditional college student cohort (age 18-24) increased by 35 percent.
- Forty percent of these traditional college students received financial aid, as opposed to only 17 percent of undergraduates older than age 40.[3]

Regrettably, these regulations deny students access to the powerful capabilities now available through the Web to provide learning experiences that can be individualized to respond to the specific needs of each student.

The U.S. Department of Education is beginning to identify potential alternatives to providing student aid to those enrolled in online programs. In October 2000, it convened dozens of representatives of traditional and nontraditional post-secondary institutions, higher education associations, and the student financial aid sector to address alternatives to the 12-hour rule. The Commission was told that the Department's position has been that a wholesale elimination of these rules would leave the door wide open for abuse and the history of the Title IV program has been marked with such episodes.

Ban on Incentive Compensation Plans

In 1992, Congress prohibited colleges and universities that participate in the federal student financial aid program from paying any commission, bonus, or other incentive payments to third party entities based directly or indirectly on their success in helping to secure enrollment of students. The provision was enacted to protect students against abusive recruiting tactics, although the law is now being interpreted to apply to the enrollment of students via "Web portals." These online "Yellow Pages" are commonly financed through the use of referral fees and tuition-sharing agreements. Although not the original intent, the language of this restriction effectively bars higher education institutions that participate in Title IV from using third-party Web portals. For many institutions, such Web portals would be an effective way to provide prospective students with access to information and application processing.

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Current federal regulations permit an institution to use its own Web site to recruit students. However, if the institution pays a Web portal to provide the same passive, asynchronous service, and that payment is based on the number of prospective students visiting the site who ultimately apply or enroll, the institution is at risk of losing its Title IV eligibility. Higher education groups have asked the Department to consider changing regulatory language, reflecting the growing reliance of higher education consumers on Web portals. However, the Department has concluded that this provision could only be changed through new legislation.

As a Commissioner of the Web-Based Education Commission, I believe the clarification and enhancement to expand the opportunities for higher education via telecommunications contained in the Internet Equity and Education Act of 2001 appropriately addresses the issues and concerns presented to the Commission. The replacement of the 12-hour rule applicable to non-standard term programs with the requirement that such programs be held to the same attendance criteria as programs offered on a traditional semester basis will encourage the growth of anytime, anywhere, and any pace learning through distance delivery techniques.

The modification of the "50 Percent Rule" to allow institutions the ability to offer more than 50 percent of their classes by telecommunications, if the institution already participates in the student loan program with a default rate of less than 10 percent for the three most recent years, will expand the opportunities for students to access quality courses through the Internet and other telecommunications technologies. This modification will encourage institutions with a demonstrated ability to provide traditional educational opportunities to expand the course and program offerings available through distance accessibility techniques.

The clarification of the incentive compensation restrictions with regard to student recruiting is an important step to enable web-based education. The prohibition would now only apply to non-salary payments to persons directly involved in recruiting students or awarding financial aid as a result of their success in enrolling students. These changes will enable the development of appropriate processes to better serve students who participate in programs accessible through distance delivery techniques.

On behalf of the many persons and organizations who provided testimony to the Web-Based Education Commission, it is a privilege, as a member of the Commission, to endorse and encourage the enactment of the HR 1992, the Internet Equity and Education Act of 2001.

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[1] Teachers College, Columbia University. e-Testimony to the Web-based Education Commission. September 21, 2000. http://www.webcommission.org/directory

[2] Heeger, Gerald, University of Maryland, University College. Testimony to the Web-based Education Commission. July 19, 2000. http://www.webcommission.org/directory

[3] Regents College. e-Testimony to the Web-based Education Commission. August 22, 2000. http://www.webcommission.org/directory

APPENDIX G - WRITTEN STATEMENT OF OMER E. WADDLES, EXECUTIVE VICE PRESIDENT, ITT EDUCATIONAL SERVICES, INC., INDIANAPOLIS, INDIANA

Testimony to the
Committee on Education and the Workforce
U.S. House of Representatives

by

By Omer E. Waddles, Esq.
Executive Vice President
ITT Educational Services, Inc.

on behalf of the
Career College Association

June 20, 2001

Executive Summary

Mr. Chairman and members of the Committee, thank you for this opportunity to come before the Committee to voice our support for H.R. 1992, The Internet Equity and Education Act of 2001. I am the Executive Vice President of ITT Educational Services, Inc. I am in charge of overseeing the operations for our 70 ITT Technical Institutes in 28 states with approximately 29,000 students. We provide career-focused, degree programs in the areas of technology.

I am appearing today on behalf of the Career College Association (CCA) and their 963 members.

The business processes in all industries have some form of information component, thereby requiring those industries to require information technology specialists and other members of a "technology literate" workforce. To ensure that the nation remains competitive in the global economy, higher education institutions must respond to the increasing need for technology literate workers in their program design.

Complicating the situation are changes in the workforce. The current workforce already has difficulty finding time to upgrade skills and knowledge while working and attending to family needs. Even greater productivity pressures will occur when the large "baby boomer" cohort begins to turn age 62 and retire in 2008.

To ensure a sufficient technologically literate workforce, higher education will have to develop programs that are designed around the specific needs of three groups: current workers, retired boomers and disadvantaged or minority groups that are currently under-represented in the workforce. These groups each have different priorities and criteria that will affect the design of programming if it is to meet their respective needs.

Higher education institutions have turned to non-traditional methods of educational programming in recent years to try to meet these differing needs. Generally, educational programming has been changed to allow it to be accessed either in the home or in other physical locations convenient to the student. Program calendars have become more flexible to assist workers with issues such as heavy work demands or travel schedules. To better serve the workforce, this trend must be extended.

The spirit of the Higher Education Act of 1965, as amended, was to increase student access to education. That spirit is even more important today as we face workforce changes. Several Department of Education regulations, created prior to the recent technology and economic trends, have outlived their original intent and have as a by-product a punitive effect on students who prefer non-traditional educational programming and scheduling. These students do not have equal access to financial aid, as do students of traditional in-class programs.

HR 1992 includes proposed remedies to some of these challenges by:

- Reducing the burden of the online 50-percent rule and allowing financial aid to be provided to students who are attending schools with default rates below 10% but have more than 50% of their programs available online;

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- Eliminating the 12-hour rule and stipulating that traditional and non-traditional programs should be held to the same attendance criteria.

HR 1992 also provides needed guidance on the subject of compensation of employees involved in recruiting or providing student financial aid. It clarifies that incentive compensation restrictions apply only to *non-salary* payments to those *directly* involved in either of these two activities.

The 963 members of the Career College Association enthusiastically support the concepts in HR 1992. We have included with this testimony suggested report language that we believe will help to further clarify the intent of the incentive compensation provision.

I. Education Issues in Workforce Development

Dot-com meltdowns have captured the popular press, but the real impact of the information technology evolution is "Act Two" of the New Economy. This is being seen in the depth of the change that has taken place in the traditional sectors of the full economy. According to the Information Technology Association of America (ITAA) over 90% of the IT jobs are being created in these traditional businesses. That is because business processes in all industries have some information creation or exchange component, and the improved efficiencies related to the streamlining of these business processes should be a top priority of the nation to insure our continued business competitiveness.

As the Department of Commerce reported in "Digital Economy 2000," information technology is being used to improve design and engineering, conduct R&D, reduce development time, simplify manufacturing, manage inventory, facilitate training, improve customer service and reduce costs. According to Commerce, "Although IT industries still account for a relatively small share of the economy's total output--an estimated 8.3 percent in 2000—they contributed nearly a third of real U.S. economic growth between 1995 and 1999." Clearly IT has become an engine for the creation of economic activity and business growth.

Demand for information technology workers is anticipated to continue as more industries integrate the Internet and its protocols into their internal business processes. The Bureau of Labor Statistics predicts that, between 1998 and 2008, the number of computer support specialists will have increased by 102 percent and database administrators by 77 percent. The Information Technology Association of America's study found that 425,000 IT jobs would go unfilled this year alone. Another estimate came from the consulting firm META Group and their estimate claimed that those unfilled information technology jobs would number at least 600,000. In addition, the META Group also found a widening salary gap. This occurs as technology workers' salaries are continuing to increase at a faster rate than their non-technology related counterparts.

In past decades it was the presence of or lack of, of material or financial assets that dictated the level of success of a business endeavor. Today it is the presence or lack of, of human intellectual capital that is the proven predictor of success. The obvious conclusion is that we must do everything we can to nurture the development of information technology workers and a

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"technology literate" workforce if we, as a nation want to insure our continued competitive abilities. We must make good on the traditional promise of real *"access to quality"* education for all those who seek it.

In its report "A Nation of Opportunity," the 21st Century Workforce Commission stated, "Many IT jobs require, at a minimum, an associate's degree and/or specific postsecondary school certifications attained through specialized technical training. A large percentage of IT jobs require a postsecondary education degree, with rigorous computer science and engineering degree programs representing the primary path to the Core IT Professions. These requirements reflect general labor market trends in which a premium is placed on advanced education and training."

We, as educators, must respond to this critical need by providing current and future programs that will develop a technologically literate workforce.

Workforce Challenges

However, there are other workforce issues looming before us in the coming decades. "Baby boomers," the largest—and most educated––population cohort the nation has ever seen, is about to enter retirement. How will industry respond to this societal shift that will further deplete the available workforce?

One obvious effect will be increased productivity pressures on the remaining, smaller workforce. This smaller group of workers is the same ones that the Department of Labor predicts will move

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through at least five different careers during their working years. Preparation for five careers certainly will mean the need for continuous acquisition of new knowledge and skills. Lifelong learning will become a living necessity to these workers. Their career and changing employers will demand easy access to our previously mentioned learning opportunities. These customers are already demanding that they have more choices with regard to the delivery, style and content of these educational services. They want these products delivered when and where they choose not in the traditional manner where the institution chooses the means and methods.

Another response industry may take is to provide incentives for the "Boomer" cohort to remain in or re-enter the active workforce. An AARP study found that many of today's aging workers are very receptive to this idea of retention or reengagement of employment. Eighty percent of the workers surveyed in this "Boomer" population expect to work at least part-time in retirement. The Bureau of Labor Statistics projects that the workforce participation rate for those aged 55 and older will rise to 36.8 percent by 2008, the year in which the oldest "Boomers" will turn 62. That is a 5.5 percent increase over the actual 1998 participation rate.

Additional qualitative studies also indicate that in order to be attractive to "Boomers" the job they would consider returning to must be intellectually challenging and has some form of financial security. Phoenix-based retirement community developer Del Webb Corporation has scrapped plans for shuffleboard courts and replaced them with computer labs and college classrooms in their facilities. To continue to play an important role in evolving technology and the new economy, "Boomers" will require their own access to quality education and will choose in many cases to define it for themselves. To keep this valuable working resource engaged and up-to-date employers must continuously upgrade the "Boomer's" array of technology skills.

A third response industry and the nation should undertake to shore up the technology literate workforce is to insure access for those groups currently under-represented: women, minorities, those with physical disabilities, and the economically disadvantaged in our cities and rural areas. These diverse groups are in the greatest need of more choices in their menu of training and education. We no longer can afford to let them sit on the sidelines of today's industry. We need their active participation in all aspects of this complex working world. These programs that are designed to work with each group's unique needs must include the same commitment to access and quality that we want for all programs.

Challenges for Educators

So the burden falls on educators representing all types of institutions to step up their ability to meet this challenge. One thing we should be able to agree on is that increasing the educational attainment of our citizenry is a better long-term investment than the temporary solutions that include importing short-term Band-Aid help with the use of visas and work permits. Business understands the importance of having the workforce available at a moment's notice. This requires investment in the people we can see and touch today and those who are being trained currently for tomorrow's needs.

What do we, as education providers, have to consider as we design programming to meet the demand for technology literate workers? Here just a few of the problems we currently face:

- More than 40 percent of full-time postsecondary students already work either part- or full-time.
- Increasing numbers of full-time workers are returning to school to improve skills or change careers.
- The younger cohorts working full-time find it increasingly difficult to balance work, family life and the desire or demand for more education.
- Working parents have difficulty in arranging childcare so they can attend class.
- Workers and retirees alike resist commuting to classes.
- Potential students in economically disadvantaged areas lack transportation to class and support from their families.
- Potential students in rural areas are too far from classes.
- Potential students whose parents did not have postsecondary education may lack the confidence or motivation to embark on a postsecondary program for themselves.

Is it any wonder, then, that higher education has begun to utilize a number of "non-traditional" methods and settings to make educational offerings available? The National Center for Educational Statistics found that in the 1997-98 school year, almost 44 percent of all higher education institutions offered distance-based courses, an increase of one third from just three years earlier. Enrollment in postsecondary distance education courses more than doubled during that time, to 1.6 million students nationwide. The research firm, International Data Corporation, estimates that 2.2 million students are expected to enroll in online courses by 2002.

Like the new economy, distance learning can not go away. Use of techniques including non-classroom sites, collaborative study, independent learning, on-the-job programs and distance learning programs help students, especially working adults, overcome many of the barriers I have listed that face students today.

II. HR 1992 Increases "Access to Quality" in Education

What many institutions of higher education need, in order to fulfill our important role in retooling the workforce, is the ability to be flexible enough to design programs that meet the varying needs of students, and to do so with the most efficient operation possible. The critical role of the oversight triad of state and federal government and the accrediting agencies is to ensure the quality of the programs that are made available and the administrative capability of the institutions. What is not effective is the use of narrow and artificial barriers that fail to focus on the quality of the product and only address the process. It is the student who gets lost in the battle between quality and process.

It was the original intent of the Higher Education Act of 1965, as amended, to increase students' access to quality in postsecondary education. Pursuing that original intent is even more important today as education plays an increasingly important role in helping our workforce to stay competitive in an ever-changing global economy. We acknowledge that the pre-eminent concern of the Department of Education has been to insure the quality and reliability of educational programs. However, we do believe the role of the Department of Education should not be solely focused on determining what type of programs are most effective or are believed to be the most accepted or desirable. Instead we suggest the Department should be fostering an environment in which higher education institutions have the flexibility to develop many types of programs targeted at accommodating the increasingly wide array of needs of students.

A number of the regulations promulgated by the Department of Education over the past three and one-half decades have outlived their original intent and applicability to today's needs and demands. The learning environment of the global economy is demanding more of us than what we placed on the books in the seventies and eighties. The legislation we are commenting on today, H.R. 1992, helps us all begin a new journey targeted at ensuring the same things we have wanted since 1965. It helps us to focus on how best to provide to our nation's students access to educational services that meet their needs in their own specifically defined educational time and place. Access to not just any program, but programs and providers that meet high levels of quality and effectiveness.

The 50 Percent Rule

For example, the "50 percent rule." This rule was created in response to various concerns about the level of quality in correspondence courses back in the late 1970's and early 1980's. This rule does not reflect the highly effective communications and interactive teaching methods developed for use on the Internet only in the last few years. By offering only reduced financial aid to those pursuing an online education, the rule in effect punishes students who have selected that method because of family, health or location considerations. This not only restricts access, it hampers workforce development in the very types of technology education and training the country needs most to remain competitive.

Higher education institutions and accrediting bodies have made great progress in creating and recognizing sound technology-based teaching methodologies. In lieu of using the outdated standard of "seat time," the Department should maintain its oversight responsibilities by allowing recognized accrediting bodies to set new and innovative standards that hold education providers accountable.

HR 1992 as proposed provides a sound first step as a remedy for this inequity. It allows institutions to offer more than 50 percent of their courses by telecommunications, thereby supporting access. It also provides barriers of entry to entities that have not previously demonstrated sufficient quality standards by requiring current participation in the student loan program. While doing this we interpret the legislation as not removing the participation of those that are already involved with the current demonstration programs for distance education. In a subsequent section, I will recommend broadening the bright line test of the singular 10% loan default provision to include additional measurements of quality.

The 12-Hour Rule

While initially well intended so as to insure programs comply with a traditional form of quality programming, the result of the non-legislative "12-hour rule" has meant that access by interested students was restricted. Many students have family responsibilities, heavy workloads, travel schedules or other personal factors that prevent them from attending a traditional classroom program. These same individuals can and do participate in many forms of more flexible educational programs that include features such as self-paced designs, weekend schedules and online components. Accrediting bodies are fully capable of insuring that these programs produce results that are at least equal to those of traditional programs. Some of these newly designed programs require students to meet only once per week. Therefore, the Department should not punish students enrolled in non-traditional programs by allowing them only reduced levels of financial aid.

HR 1992 contains the desirable remedy that requires that traditional and non-traditional programs should be held to the same attendance criteria.

Incentive Compensation

Some in the Department have interpreted the statutory language on compensation of recruiters and financial aid personnel more broadly than we believe Congress originally intended. All institutions, whether not-for-profit or for-profit, must be allowed to utilize standard business management practices in the promotion of their institutions, the enrollment of students and the processing of financial aid. As a result of the over broad interpretation, colleges and institutions are being asked to evaluate and then compensate employees by measuring activities that are not central to their employment. No one is supporting the return to what we saw in the early 1980's where there were some unscrupulous providers who were recruiting individuals out of welfare lines for schools that had no substance or educational value. That is not the case today. We do not have those headlines, and if we do, every part of the oversight triad is charged with ridding the system of those charlatans. But all of us have to measure our recruiters and financial aid administrators on the work that they are hired to do. To do anything less would not be supporting the basic premise of an honest day's wage for an honest day's work. I think the technical changes included in this bill will help the Department better interpret the intent of the legislation and allow them to avoid the unnecessary narrowing of what is allowed in the area of salary and compensation. To tell a college they can employ a person to be a recruiter or representative but they cannot link the compensation of that individual to their work product would be the same as attempting to tell congressional constituents they cannot consider a candidate's voting record during an election.

The current environment, in which the education community has been given little or no detailed interpretation of the regulation, has constrained us from many times hiring and retaining the personnel we need, utilizing innovative promotion techniques provided by third parties, and with some interpretations, from allowing owners and managers of for-profit colleges to participate in the financial successes of their schools.

HR 1992 makes great strides in clarifying that incentive compensation restrictions apply only to *non-salary* payments to those *directly* involved in recruiting students or awarding financial aid. The bill also creates the structure by which violations are met with appropriate rather than unfairly punitive sanctions.

In summary, HR 1992 provides much needed relief from outdated regulatory constraints and provides greater flexibility to allow institutions to develop educational programming that can meet student needs and to pursue the enrollment of those students in an efficient and effective manner.

III. Recommendations

I am here today on behalf of the 963 members of the Career College Association, representing over one million students, to say that we enthusiastically support HR 1992 as it is written. It contains important reforms that will be beneficial to traditional and non-traditional students alike.

I do have a personal comment with respect to the modification of the 50-percent rule. The bill's current language stipulates that an institution must have a student loan default rate of less than 10 percent for the three most recent years in order to qualify for this waiver of the 50-percent rule. This is a good first step. Two years form now when Congress considers reauthorizing the Higher Education Act, we urge the Congress to consider using other indicators of institutional success. Use of performance factors present a more well rounded picture of the institution and avoid the historic over-reliance upon a single bright line test. By using a single blunt edged tool, we are saying that you are a good distance education provider if you are on one side of the line and you are assumed to be a less effective provider if you are on the other side of the line. Quality is again what we are striving to ensure, not just process.

In addition, CCA asks that you consider adopting our proposed report language to help further clarify the issues related to the incentive compensation provision:

The reference to "other incentive, non-salary payment" clarifies that the statutory prohibition extends only to bonuses, commissions, and similar payments. It does not apply to setting or prospectively adjusting salary from time to time, based on performance of legitimate job functions.

The reference to payments "based directly on success" in securing enrollments clarifies that institutions may provide incentive compensation to admissions personnel based on their performance of legitimate recruiting activities that are commonly undertaken by recruiters on behalf of institutions of higher education prior to enrollment and the start of classes. Such activities and practices include, but are not limited to, recruiting visits to high schools or other sources of prospective students; telephone calls and similar communications (including written letters and e-mail) aimed at recruiting prospective students; personal interviews of prospective students; the giving of tours to prospective students; the provision of various academic and general, school-related information to prospective students; and obtaining certain information from prospective students, including but not limited to applications, transcripts, high school diplomas, and other documentation needed to complete an application to enroll at an institution of higher education.

The change in language also is intended to permit employee, senior manager and owner participation in the profits of the institution or the award of bonuses, stock options or stock based upon the financial performance of the institution.

The reference to persons or entities "directly engaged" in recruiting or awarding financial aid clarifies that the statutory prohibition applies only to those who directly recruit students or award financial aid. It does not apply to supervisors or higher level executives, *although they may supervise such persons or be above them in the institution's organizational chart, that do not recruit prospective students or award financial aid. The provision also does not apply to payments to a third party, such as a Web services provider, as long as the employees of the third party are not themselves paid a commission based on success in directly securing enrollments or financial aid."*

Thank you for this opportunity to provide testimony to the Committee on this important piece of legislation. We believe that HR, 1992, The Internet Equity and Education Act of 2001, is a needed piece of legislation of which CCA and its member institutions support passage. As I stated earlier, I believe this represents an exciting starting point for the evolution of our laws, rules and regulations in the area of higher education. We need to continue reviewing all aspects of the programs and participants in higher education to ensure their compatibility with the demands of our changing economy.

Thank you.

the Workforce

Witness Disclosure Requirement - "Truth
in Testimony"

Your Name: Omer E. Waddles		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the Committees).	Yes	No X
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you Have received since October 1, 1998: None		
3. Will you be representing an entity other than a government entity?	Yes X	No
4. Other than yourself, please list what entity or entities you will be representing: The Career College Association		
5. Please list any offices or elected positions held and/or briefly describe your representational Capacity with each of the entities you listed in response to question 4: The organization for which I work, ITT Educational Services, Inc., is an active member of the Career College Association.		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the Entities you listed in response to question 4 since October 1, 1998, including the source and Amount of each grant or contract: None		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:	Yes	No X

Signature: Omer Waddles **Date: June 15, 2001**

Please attach this sheet to your written testimony.

APPENDIX H - WRITTEN STATEMENT OF JOSEPH S. DiGREGORIO, VICE PROVOST FOR DISTANCE LEARNING, CONTINUING EDUCATION AND OUTREACH, GEORGIA INSTITUTE OF TECHNOLOGY, ATLANTA, GEORGIA

Testimony Regarding "H.R. 1992, the Internet Equity and Education Act of 2001"

The House Committee on Education and the Workforce

Subcommittee on 21st Century Competitiveness

Presented by:

Dr. Joseph S. DiGregorio, Vice Provost

Distance Learning, Continuing Education, and Outreach

The Georgia Institute of Technology

Atlanta, GA

June 20, 2001

INTRODUCTION

Thank you for providing The Georgia Institute of Technology with the opportunity to speak this morning on issues we believe are of vital importance to all of us involved in providing high-quality credit courses and degree programs to distant students throughout the nation.

On behalf of G. Wayne Clough, President of The Georgia Institute of Technology, I would first like to commend and congratulate Congressman Johnny Isakson and his fellow sponsors of "The Internet Equity and Education Act" (H.R. 1992) for their vision and foresight in proposing amendments to the Higher Education Act of 1965 that will greatly expand student access to higher education via modern telecommunications technologies.

If the United States is to remain economically competitive and also maintain its position as a worldwide leader in post-secondary education, we need to implement policies that will make education available to all citizens of the nation. As the global leader in the development and dissemination of education programs through innovative technologies, the United States cannot afford to exclude any of its citizens by keeping in place roadblocks that restrict access to lifelong learning and training. Thank you, Congressman Isakson and colleagues, for all your efforts to help bring greater access to higher education to all our citizens.

GEORGIA TECH: A WORLDWIDE LEADER IN EDUCATIONAL TECHNOLOGY

For over one hundred years Georgia Tech has been providing high-quality educational programs to residents of Georgia and the rest of the nation at its main campus in Atlanta. Additionally, since 1969 Tech has been delivering education and training to students around the world via its distance learning program. Through our Center for Distance Learning our academic units provide high-quality credit and non-credit courses and programs to working engineers and other technical professionals via a wide range of distance learning technologies, such as videotape, microwave, satellite, video conferencing, cable TV, and, most recently, CD-ROM and the Internet.

Beginning in August 1999, Tech began offering a series of 22 innovative graduate-level credit courses that enable qualified students around the world to earn a Georgia Tech Master's Degree in Mechanical Engineering (MSME) without ever setting foot on our Atlanta campus. To our knowledge, this is the only Internet-based MSME degree offered by any educational institution in the world. Starting in the fall 2000 semester, Tech began producing and delivering online graduate-level courses in Electrical and Computer Engineering. We plan to add additional courses and degrees completely online over the next several years to meet increasing worldwide demand for such programs.

All Georgia Tech online graduate courses use state-of-the-art streaming audio and video technologies, synchronized with slides, simulations, and other multimedia, and make maximum use of the pedagogical advantages offered by web-based courseware and instruction.

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As you can see, Georgia Tech is actively involved in the development and delivery of education and training to non-traditional students. We have made a commitment to providing access to our courses and degrees to qualified students across the country and around the world. We see this as an important mission for our future and the future of higher education in the new century. The proposed amendments to the Higher Education Act of 1965, as described in H.R. 1992, will make it easier for many post-secondary schools to provide educational opportunities to an increasing number of our citizens.

BACKGROUND

In its groundbreaking 1988 report entitled "A National Action Plan for Career-Long Education for Engineers," the National Academy of Engineering (NAE) summarized what U.S. business and industry had long recognized, i.e., that the nation's supply and quality of engineering intellectual capital might be insufficient to meet future goals. NAE outlined several reasons for this, including fierce worldwide economic competition, rapid technological advancement, and the changing nature of the pool from which future engineers would be drawn. Furthermore, the NAE offered strong arguments for the nation to invest in post-baccalaureate, career-long education of practicing engineers to help overcome the shortfall of engineering intellectual capital and to assist individual engineers in continuing their career development.

National and international events during the thirteen years since the NAE report have not only strengthened its conclusions, but have led many U.S. engineering schools to re-evaluate the role played by the continuing professional development units in their overall

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mission and goals. Likewise, other academic disciplines at colleges and universities throughout the nation are finding themselves more than ever before under increasing pressure to focus on the ongoing, or lifelong, learning needs of working professionals, not just on the educational requirements of the students physically present on campus.

Merely providing additional on-campus "bricks and mortar" will not increase access to education or training for those students who, for whatever reason, cannot register for traditional campus-based, classroom instruction. The need and the ability to distribute educational outreach programs worldwide via the Internet, without regard or respect for traditional geographic boundaries, have compelled most institutions of higher learning to make their educational technology programs a key component of their strategic plans in the new century.

No longer are on-campus students and working professionals constrained by limitations on time and space in their desire to continue their education. And no longer are colleges and universities limited in their ability to reach beyond their traditional campuses to serve new student audiences. Indeed "web-based education" is rapidly becoming an accepted mode of delivery of academic programs both on-campus and at a distance.

As web-based delivery of education at all levels expands, post-secondary educational institutions have focused their attention on the key issues affecting their ability to deliver high-quality academic programs over the World Wide Web, i.e., issues related to curriculum, instruction, students, delivery technology, fiscal resources, etc. While these issues are also of great importance to the federal government and other public policymakers in ensuring that students have a quality educational experience, the role of the government should not be to control or direct web-based education, but rather to advise, facilitate, support, and provide incentives and resources to both web-based education producers and consumers. In the final analysis the marketplace should decide which web-based education programs are of highest quality and which are not, and which producers are providing the best instruction, content, support, infrastructure, etc, and which are not.

ELIMINATING BARRIERS TO EDUCATIONAL TECHNOLOGY

As described in testimony I presented in August 2000 to the Web-Based Education Commission, The Georgia Institute of Technology believes that policymakers should focus on assisting producers and consumers of web-based education and on eliminating barriers that could prevent the web-based education market from reaching its full potential.

In its landmark report to the President and the Congress of the United States, entitled "The Power of the Internet for Learning: Moving from Promise to Practice," the Web-Based Education Commission called for "revising outdated regulations that impede innovation and replacing them with approaches that embrace anytime, anywhere, and any pace learning." We believe that H.R. 1992 "The Internet Equity and Education Act of 2001" will begin the implementation of this important recommendation of the Commission by providing an expansion of Internet-based educational opportunities for postsecondary students through the elimination of some of the barriers existing under current law. Georgia Tech strongly supports the broadening of opportunities for online education within the context of maintaining the integrity of federal student aid programs. Mr. Isakson and the Committee should be applauded for taking important steps towards updating the nation's regulatory approach to new methods of delivering online education.

Two regulatory barriers that H.R. 1992 will address are the "50 percent rule" and the "12-hour rule." These rules were originally directed towards concerns about correspondence education and are now applied to modern methods of distributing education through electronic technologies. They make no provision for virtual universities or for self-paced online courses that rely less on face-to-face instruction than do traditional courses taught in campus classrooms. The Department of Education's "Distance Education Demonstration Program (DEDP)," which allows a select group of institutions to ignore the 50 percent rule, the 12-hour rule, and four other federal rules that inhibit access to distance learning, while still providing federal financial aid to students, is a promising indicator that less regulation can expand educational opportunities via new technologies and delivery systems.

The 50 percent rule limits the number of courses an institution may offer via electronic technologies and the number of students an institution may enroll in such electronic courses and still remain eligible to participate in Title IV student aid programs. This rule also limits the amount of aid a student enrolled in distance education courses delivered via telecommunications may receive if the institution offers half or more of its courses by correspondence or telecommunications or if more than half of its students are enrolled in such courses. The 50 percent rule hinders the development of legitimate, quality distance education programs and student access to higher education through these programs. Post-secondary institutions that are already participating in the federal student loan program, and which have student loan default rates under ten percent over the three most recent years, should have no limit imposed on the number of courses they can offer over the Internet or the number of students they can reach through telecommunications technologies.

The 12-hour rule imposes unnecessary constraints upon student access to federal financial aid for credit courses and degree programs delivered in non-traditional settings, e.g. via electronic technologies. Such constraints hinder innovation and flexibility in the offering of academic programs as a result of the enormous and expensive administrative burdens they impose on colleges and universities.

Perhaps the greatest benefit to be gained from the enactment of H.R. 1992 will be increased access to post-secondary education for disadvantaged students and/or underrepresented groups. These students frequently cannot take at least 12 hours of instruction per week due to family, job, health, and other commitments, and thus do not qualify for full financial aid. The elimination of barriers to financial aid for these students will certainly narrow the "digital divide" by providing needed educational opportunities to begin or advance careers and to contribute and participate in the economic successes of our nation.

CONCLUSION

The number of non-traditional students enrolled in post-secondary schools has grown significantly over the past decade and will certainly continue to increase. Federal policy should encourage, not impede, this growth. To be competitive in a knowledge-based economy, the United States must increase quality-based, responsibly-managed education and training programs for a larger percentage of its citizens, and provide opportunities for those citizens who, for whatever reason, cannot currently obtain educational access. H.R. 1992 is directed towards expanding access for all citizens. We commend the Committee for taking important steps towards helping the nation achieve these goals.

Again, we thank you for providing our institution the opportunity to comment on these vitally-important issues and applaud the introduction of H.R. 1992. On behalf of Georgia Tech I pledge our continued commitment to work with the Committee and within the higher education community to improve the delivery of high-quality online educational opportunities to the nation.

APPENDIX I - LETTER SUBMITTED FOR THE RECORD BY RANKING MEMBER PATSY MINK, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE, FROM DR. JULIET GARZA, CHAIRPERSON, ADVISORY COMMITTEE ON STUDENT FINANCIAL ASSISTANCE, WASHINGTON, D.C.

Advisory Committee on Student Financial Assistance

June 19, 2001

The Honorable Patsy T. Mink
Chairman, Subcommittee on 21st Century Competitiveness
United States House of Representatives
H2-230 Ford House Office Building
Washington, D.C. 20515

Dear Congresswoman Mink:

The Advisory Committee on Student Financial Assistance was established by Congress in the Higher Education Amendments of 1986 and serves as an independent source of advice and counsel on student aid policy to Congress and the Secretary of Education. The purpose of this letter is to provide an update on the Advisory Committee's activities to date in the area of distance education and offer suggestions regarding the Internet Equity and Education Act of 2001 (H.R. 1992).

In the 1998 reauthorization of the Higher Education Act, the Advisory Committee was charged in P.L.105-244 with evaluating the implications of distance education for student eligibility requirements for financial assistance. Pursuant to statute, two principles are of paramount importance to the Congress and the Advisory Committee in fashioning an appropriate federal role and policy interest in distance education as it relates to Title IV assistance: the maintenance of enhancement of access to postsecondary education for low- and middle-income students; and the preservation of program integrity. That is, any changes in the federal rules governing student and institutional eligibility should do no harm to either access or integrity.

Over the last few years, the Advisory Committee has conducted extensive research and held several well-attended meetings on access and distance education. These discussions with leading distance education providers and other higher education leaders led to a consensus that there are many issues related to distance education that call for care and restraint in the development of federal policy. Through its deliberations, the Advisory Committee found that:

- Most existing distance education programs can and do benefit significantly from federal student assistance already.
- Many leading distance education providers are concerned with maintaining quality and program integrity and would prefer to modify their programs to meet existing federal eligibility rules rather than advocate for changes that might encourage fraud and abuse.

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An independent committee created by Congress to advise on student aid policy

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- It is important to avoid fundamental, policy-altering, legislative changes if what is actually required is merely technical and regulatory in nature.
- Existing distance education programs are designed with the adult continuing education and graduate learner in mind. It remains to be seen how distance education programs might best serve the Title IV student aid target population.

For the reasons cited above, it does not appear that H.R. 1992 would significantly enhance access for low-income students. Thus, the potentially significant implications for access—in terms of cost, targeting of need-based aid, and the features of the interlocking policies designed to protect program integrity—must be altered with great care. We hope that the Committee will consider the Advisory Committee's findings during its discussions regarding the Internet Equity and Education Act of 2001.

As always the Advisory Committee stands ready to help in any way we can.

Sincerely,

Dr. Juliet V. Garcia
Chairperson

cc: The Honorable Howard P. Buck McKeon (Identical original letter sent)
The Honorable John Boehner
The Honorable George Miller
The Honorable Edward Kennedy
The Honorable Judd Gregg
The Honorable Roderick Paige
Advisory Committee members
Members of the Senate Health, Education, Labor and Pensions Committee
Members of the House Committee on Education and the Workforce

APPENDIX J - REPORT TO CONGRESS ON THE DISTANCE EDUCATION DEMONSTRATION PROGRAMS SUBMITTED FOR THE RECORD BY RANKING MEMBER PATSY MINK, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE

REPORT TO CONGRESS

ON THE

DISTANCE EDUCATION DEMONSTRATION PROGRAMS

U.S. Department of Education
Richard W. Riley
Secretary

Office of Postsecondary Education
A. Lee Fritschler
Assistant Secretary

Policy, Planning and Innovation
Maureen A. McLaughlin
Deputy Assistant Secretary

January 2001

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This report is available on the Department's Web site at:
<http://www.ed.gov/offices/OPE/PPI/DistEd.html>.

On request, this publication is available in alternative formats, such as Braille, large print, audiotape, or computer diskette. For more information, please contact the Department's Alternative Format Center (202) 260-9895 or (202) 205-8113.

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REPORT TO CONGRESS
ON THE
DISTANCE EDUCATION DEMONSTRATION PROGRAM

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EXECUTIVE SUMMARY

The Distance Education Demonstration Program was authorized by Congress in the 1998 reauthorization of the Higher Education Act of 1965 (HEA) (1) to test the quality and viability of expanded distance education programs currently restricted under the HEA; 2) to provide for increased student access to higher education through distance education; and (3) to help determine the most effective means of delivering quality education via distance education, the specific statutory and regulatory requirements that should be altered to provide greater access to distance education, and the appropriate level of Title IV, student financial assistance for students enrolled in distance education programs. This is the first report to Congress concerning the results of the project.

The Department initiated the Demonstration Program on July 1, 1999 with 15 participants as authorized by the statute. The participants included eight individual institutions, five systems, and two consortia, for a total of 111 institutions. The participants were selected in a competitive process using statutory criteria that included, among other things, the number and quality of applications received and selection of a diverse cohort with respect to institutional size, mission, and geographic distribution. Program levels range from those granting certificates through graduate degrees. At the graduate level, business and education are the most popular offerings, while computer and information science programs are the most popular programs at the associate's and bachelor's degree levels, followed closely by humanities and health related programs. The methods used by participants to deliver distance education include the Internet, two-way video, and print-based correspondence, with a clear trend among participants toward increased use of Internet-based technologies.

Each participant received waivers of all three provisions that bear on the amount of correspondence education an institution eligible for the Title IV student financial assistance programs may provide (the "50% rules"). Eleven received waivers for provisions relating to the required length of a program. Two received waivers of the definition of a full-time student as it relates to correspondence study, and one, the requirements relating to satisfactory academic progress. Western Governors University received additional waivers, as provided in the authorizing statute, because of its unique structure.

Both the numbers of programs provided by participants and the numbers of distance education students enrolled increased during the first year of the Demonstration Program. Participants increased the number of distance education programs offered at all levels of instruction. The total number of students enrolled in participants' distance education programs increased from just under 13,000 in the 1998-99 academic year to over 18,200 in the 1999-2000 academic year. In addition to Western Governors University, which offers no on-site programs, three individual institutions in the Demonstration Program are approaching the 50% course threshhold.

The Department's experience in working with the participants has provided information and insight on a range of issues related to HEA requirements and administration of the Title IV student financial assistance programs. In addition to the limitations on the amount of distance education an institution may provide and the requirements relating to time, the complexity of the student aid programs in general is a major problem to schools providing aid to students enrolled in distance education programs, particularly those offered in time frames other than semesters or quarters. The lack of flexibility in the systems institutions have available to administer the Title IV student financial assistance programs is also a substantial barrier to devising alternative ways to deliver aid to students.

The report identifies for further consideration the possibility of experimentation with a "student-based" delivery system, which could simplify administration of the Title IV student financial assistance programs, and provides some additional protection to Federal funds. If any decision were made to proceed with such an experiment in the context of the Demonstration Program, it would require statutory changes in order to provide participants with additional waivers of current HEA requirements. Any such statutory changes would need to be enacted as early as possible to provide ample opportunity for current and new Demonstration Program participants to develop experiments for the coming year of the Demonstration Program that could better inform the development of new policy in this area.

Based upon the experience gained to date through the Demonstration Program, and the trends that are evident in the development of distance education generally, the following questions merit additional consideration, and may involve statutory or regulatory changes:

- Should the HEA distinguish among the various means of delivering education, either between distance education delivery methods, or between distance education and on-site educational delivery, for purposes of Title IV aid?
- Should the current Title IV requirements protecting the public investment in Title IV funds that relate to distinctions between delivery modes be retained, modified, or replaced?
- Should the current rules governing the amount of distance education an eligible institution may provide be retained, modified or replaced?
- Is there an alternative to the "12-hour rule" that would ensure that the amount of instruction is adequate in the variety of ways that academic activity is organized in distance education?
- Should the current rules that treat correspondence students differently from other students be retained, modified or replaced?

- Are there additional waiver authorities that would improve the Demonstration Program and enable it to test more completely new approaches to administering student financial aid that accommodate new and emerging patterns of organizing instruction through distance education?

INTRODUCTION

The Higher Education Amendments of 1998 (P.L. 105-244) amended the Higher Education Act of 1965 (HEA) to add a new section 486 authorizing the Distance Education Demonstration Program. The purpose of the Demonstration Program is to (1) test the quality and viability of expanded distance education programs currently restricted under the HEA; (2) provide for increased student access to higher education through distance education; and (3) to help determine the most effective means of delivering quality education via distance education, the specific statutory and regulatory requirements that should be altered to provide greater access to distance education, and the appropriate level of Title IV, student financial assistance for students enrolled in distance education programs.

Section 486 of the HEA authorized the Secretary of Education to select up to 15 participants for the first year of the Demonstration Program, which began on July 1, 1999, and up to 35 additional participants for the third year of the Demonstration Program, which will commence on July 1, 2001. As provided by the statute, the current participants include institutions of higher education and systems or consortia of such institutions. Participants have received waivers of certain statutory and regulatory provisions governing the Title IV student financial assistance programs to enable them to provide Title IV aid to distance education students more efficiently, and, in some instances, to expand their distance education programs beyond otherwise applicable statutory limits. One institution in the Demonstration Program, Western Governors University, would not be eligible to participate in Title IV student financial assistance programs without the waivers.

The chart at the end of this section summarizes information about the 15 initial Demonstration Program participants. A key to the waivers granted is provided at the end of the chart. Only waivers authorized or required by statute were granted. More detailed background information on the Demonstration Program can be found in the Appendix.

This is the first of several reports the Department of Education ("the Department" or "ED") is required to provide to Congress periodically concerning the Demonstration Program. The report is divided into four major sections:

- The first section contains information about how the Department is implementing the Demonstration Program.
- The second section includes information about the progress each participant has made toward meeting the goals it established for itself in its application; the participants' distance education programs and enrollments; the number and types of students receiving assistance and their progress toward completing degrees or certificates in the participants' distance education programs; the motivation and satisfaction of students enrolled in the participants' distance education programs; and effective technologies for delivering distance education offerings.

- The third section reports on issues related to student financial assistance, and identifies for further consideration particular statutory and regulatory provisions that may present barriers to providing Title IV student financial assistance to distance education students.
- The fourth section contains a discussion of related issues and possible risks.

The Appendix provides background information on the Demonstration Program.

Web Site
http://www.ed.gov/offices/OPE/PPI/DistEd/

SUMMARY INFORMATION ON CURRENT PARTICIPANTS

PARTICIPANT	LOCATION	TYPE	WAIVERS GRANTED*	PROGRAMS
Capella University	Minnesota	For profit	50% rules; length of academic year	Doctoral, master's, bachelor's degrees and certificate programs in five fields. Two educational formats – independent study and web-based
Community Colleges of Colorado--14 institutions	Colorado	Public	50% rules; length of academic year; week of instructional time; satisfactory academic progress	Associate's degrees and certificate programs through telecommunications technologies including Internet
Connecticut Distance Learning Consortium--25 institutions	Connecticut	Public and private	50% rules; length of academic year; week of instructional time granted to three institutions	Associate's and bachelor's degrees through telecommunications technologies, including Internet
Florida State University	Florida	Public	50% rules	Online bachelor's degree completion programs in four areas of concentration and three master's degrees.
Franklin University	Ohio	Private	50% rules	Online bachelor's degree completion programs in three areas. Web-based and correspondence.
LDS Church Education System--4 institutions	Utah, Idaho, Hawaii	Private	50% rules; academic year; week of instruction; full-time student	Bachelor's degree through web-based courses
Masters Institute No longer participating	California	For Profit	50% rules	Online associate's degree and diplomas in two areas

PARTICIPANT	LOCATION	TYPE	WAIVERS GRANTED*	PROGRAMS
New York University	New York	Private	50% rules; academic year; week of instruction	Two online master's degrees
North Dakota University System--11 institutions	North Dakota	Public	50% rules; academic year; week of instruction; full-time student	Several associate's degrees, bachelor's degree completion programs and master's degrees through various modes of distance education—two-way video, web-based and correspondence courses.
Quest Education Corp American Institute for Commerce/Hamilton College Now Kaplan College	Iowa	For profit	50% rules; academic year; week of instruction	Two associate's degrees and one certificate through the Internet
Southern Christian University	Alabama	Private	50% rules	Bachelor's, master's and doctoral degrees through telecommunications technologies including the Internet
Texas Tech University Replaced Southwest Consortium for Advancement of Technology in Education (SCATE)	Texas	Public	50% rules; academic year; week of instruction; full-time student	Bachelor's degree through correspondence and Internet; several online master's degrees, and a doctoral degree through telecommunications, including Internet.
University of Maryland University College	Maryland	Public	50% rules; academic year; week of instruction; full-time student	Online bachelor's degrees in 15 areas and several master's degrees and certificate programs
Washington State University and Washington Community and Technical College System--33 institutions	Washington	Public	50% rules; academic year; week of instruction; full-time student	Online associate's degrees in four areas and bachelor's degree completion programs in six fields through correspondence and telecommunications, including Internet.
Western Governors University	Utah, Colorado	Private	50% rules; academic year. Several special waivers were extended to WGU as specified in the Program legislation	Professional certificates, several associate's degrees and one master's degree. WGU does not offer courses; degrees and credentials are competency-based.

* Key to Waivers

50% rules:

Section 102(a)(3)(A) of the HEA and the regulatory provisions implementing that provision in 34 CFR 600.7(a)(1)(i). These statutory and regulatory provisions make an otherwise eligible "institution of higher education" under the HEA ineligible if the institution offers more than 50 percent of its courses by correspondence.

Section 102(a)(3)(B) of the HEA and the regulatory provisions implementing that provision in 34 CFR 600.7(a)(1)(ii). These statutory and regulatory provisions make an otherwise eligible "institution of higher education" under the HEA ineligible if the institution enrolls 50 percent or more of its students in correspondence courses.

Section 484(1)(l) of the HEA. This provision would define a telecommunications student as a correspondence student if 50 percent or more of the institution's courses are offered by correspondence or telecommunications.

Academic year: Sections 481(a) and 481(b) of the HEA and the regulatory provisions implementing those sections in 34 CFR 668.2 and 668.8 to the extent that they require a minimum number of weeks of instruction for an academic year.

Week of instruction: 34 CFR 668.8(b)(2). This provision defines a "week of instruction."

Full-time student: The definition of "full-time student" in 34 CFR 668.2 to the extent that it precludes a correspondence student from being considered a "full-time student."

Satisfactory academic progress: 34 CFR 668.16(e)(3) to the extent that it requires consistent application of satisfactory progress standards to all students within categories of students.

PROGRAM IMPLEMENTATION

Staffing

The Demonstration Program is administered by a team consisting of staff from the Office of Postsecondary Education (OPE) and the Office of Student Financial Assistance Programs (OSFAP) with assistance provided by the Office of the General Counsel. No staff person is assigned to work full-time with the Demonstration Program. An OPE Special Assistant serves as Director of the Demonstration Program. Staff serving on the team are drawn from OPE's Office of Policy, Planning and Innovation and OSFAP's Program Development and Case Management Divisions. One or more staff members from each of the ten regional Case Management Teams serve as a Distance Education Demonstration Program liaison to participants.

Technical Assistance

Working with participants to provide technical assistance as they implemented their programs consumed by far the largest amount of time staff spent on the project. This was a very valuable use of staff resources. Participants benefited from the technical assistance provided. Equally important were the opportunities that working closely with participants offered for staff to learn first hand about the issues involved in developing distance education programs and in providing student aid to distance education students. Most of this staff work was with individual institutions and consisted of answering policy questions, assisting with issues relating to student aid administration for distance education students, and developing the Program Participation Agreement (PPA) Amendments. PPAs are written agreements required of all Title IV program participants that permit institutions to participate in one or more federal Title IV student aid programs. The amendments specify the waivers granted and the distance education programs included under the Demonstration Program. While much of this work was conducted by telephone and e-mail, Case Management liaisons visited with each participant on-site at least once during the first 18 months of the Program; and the Program Director visited on-site with a total of ten participants.

The Department held four national meetings for participants and Department staff during the first 18 months of the Demonstration Program. Participants and staff valued the opportunity these meetings presented to share information, as evidenced by the increasing number of individuals attending. The first meeting drew approximately 15 people representing 8 participants; the latest, held in October 2000, had 75 in attendance, with all participants represented.

Program Monitoring

Section 486 of the HEA requires strict program monitoring as an important component of the Demonstration Program. One of the principal responsibilities of the ten Case Management liaisons is to monitor participants' administration of the Title IV student financial assistance programs. Their work is guided in part by a Monitoring Team established to identify compliance issues and assure consistency in gathering information and monitoring.

The challenges to the Monitoring Team and the Case Management liaisons were to identify which particular student aid requirements might present barriers to providing Title IV funds to distance education students and where providing aid to distance students might present risks to the Title IV program. The student aid issues that were identified for particular attention were tracking attendance, disbursing student aid (the timing and amount), measuring satisfactory academic progress, and ensuring equity in annual awards between on-site and distance education students. Moreover, it became clear that the format in which many distance education programs and courses are offered, i.e. non-standard terms and non-terms with multiple start dates, constitutes the largest challenge. (For definitions of term structures, see page 18.) Case Management liaisons are focusing monitoring activities more on these matters during the current year.

Data Collection

The authorizing statute requires ED to report certain data over the course of the Demonstration Program. ED developed a form, approved by the Office of Management and Budget, to collect data from participants. The data collected for this first report on the Demonstration Program included numbers of distance education and on-site courses and programs, enrollments, characteristics of and retention of distance education versus on-site students, and information collected from student surveys. Participants reported baseline data for 1998-99 reflecting the period prior to their participation in the Demonstration Program and data for 1999-2000, the first year of their participation in the Demonstration Program.

Collaboration with Accrediting Agencies

Accrediting agencies are responsible for ensuring the quality of education provided by institutions that participate in the Title IV student financial assistance programs. The statute also required Demonstration Program applicants to include "consultation with accrediting agencies" as one component of their applications. Participants in the Demonstration Program are accredited by either regional or national accrediting agencies. Each of the accrediting agencies has adopted standards or guidelines governing distance education that cover all of the institutions they accredit that offer distance education.

As part of their involvement in the Demonstration Program, agencies accrediting each of the participants are voluntarily collaborating with the Department to evaluate some component of the quality of education provided by the participants. Examples of this collaboration include:

- Participation of ED staff in accrediting agency site visits.
- Evaluation of programs using agency standards and guidelines developed specifically for evaluating the quality of distance education.
- Examination of the role of a consortium in assuring the quality of the distance education provided by member schools.
- Sharing information concerning questions that relate both to participants' accreditation status and their participation in the Demonstration Program.

In addition, the work of the Inter-Regional Accrediting Commission (IRAC), formed prior to the beginning of the Demonstration Program by four of the regional accrediting associations, with the Commission on Colleges of the Northwest Association of Schools and College as the lead agency, represents an unprecedented effort to examine issues of quality presented by Western Governors University, a "virtual" competency-based institution. IRAC recently granted candidacy status to Western Governors University. (Earning accreditation is a three-step process: an institution first achieves eligibility for consideration, then candidacy, and finally accreditation.)

REQUIRED REPORTING

Participant Goals

All participants have made some progress toward achieving the goals they established for their five-year involvement with the Demonstration Program. Since the majority of the goals are long-term, detailed reporting on their attainment must be deferred to future reports to Congress. However, there are a number of interesting developments in the areas of growth, increased access, enrollment tracking, policy, quality assurance, and approaches to administering financial aid that deserve mention.

All Demonstration Program participants anticipated and experienced growth in their distance education programs[1]. Southern Christian University exceeded its goals for the 1999-2000 year for number of distance education students, as well as for the percentages of minorities and students from rural communities served through their distance education programs. Capella University nearly doubled its online program enrollments, while University of Maryland University College's online enrollments increased by 61%. Quest Education Corporation schools (The American Institute of Commerce/Hamilton College, now Kaplan College) increased substantially the numbers of distance education courses and enrollments, and also gained approval from its regional accrediting association for two online associate's degree programs.

Participants are addressing issues of access by forging new relationships among institutions. Several are involved in two plus two or bachelor's degree completion programs. These programs entail agreements between two-year and senior institutions that make it easy for a student to apply credits earned at the community college to a bachelor's degree offered through distance education. Franklin University has formed alliances with 86 community colleges nationally. Consortia in Washington, Connecticut and Colorado are sharing distance education courses among institutions located in their respective states in order to leverage their course development and faculty resources and better serve their students. As part of its two plus two initiative, Florida State University is trying to determine how to provide efficient and coordinated support for the development and implementation of degree completion programs on-campus and at a distance.

These types of arrangements present additional challenges when students take courses from more than one institution. New York University has been working with the National Student Clearinghouse, a non-profit organization funded by the student loan industry, to refine their national enrollment database. This database, should it become fully functional, would make it easier for institutions to track enrollments across schools and for students to achieve financial aid eligibility in a consortium setting. There are still some obstacles to this approach since not all institutions participate in the Clearinghouse

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[1] Participants were required to report on enrollments in distance education and on-site courses and programs. Since students frequently enroll in more than one course at a time, the course enrollments represent duplicated counts. Since a student typically enrolls in only one program, the program enrollment figures represent unduplicated counts. It is important to keep this distinction in mind while reading this section of the report.

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and those that do participate do not always report data timely enough for the purpose of enrollment tracking.

There are also obstacles to students taking courses from multiple institutions in a single system that need to be addressed. The eleven institutions in the North Dakota University System (NDUS), which share an administrative system and are governed by the same Board, are seeking to address a number of these policy issues. Several of these issues have been successfully resolved, resulting in a single registration process, a unified transcript, one bill, and the designation of a home campus for financial aid processing. NDUS is making progress on establishing a per-credit tuition rate for distance education courses and a common course numbering system.

Participants are also engaged in activities that focus on quality in distance education programs. For example, University of Maryland University College (UMUC) has initiated a number of research studies that will attempt to develop profiles of students who are most and least likely to succeed in web-based learning, and to identify intervention strategies to improve student success rates. UMUC is also studying interaction in online courses in an attempt to determine if there is a correlation between the rankings given a professor in student evaluations and the actual quality of interaction being offered online. Capella University is participating in the North Central Association of Colleges and Schools Academic Quality Improvement Project, which will engage Capella in a process of continuous quality improvement in the systems it uses to provide education and services to students.

The Community Colleges of Colorado are testing a new paradigm for delivering aid that decouples the delivery of student aid for costs related to instruction, such as tuition, fees, books, supplies and equipment from costs relating to living expenses. The aid awarded for instructional costs is disbursed based on student progress; for living expenses, the aid is awarded on months elapsed. Students receive aid for instructional costs as they complete various milestones in their educational programs, but receive aid for living costs for the months they were actually enrolled.

Western Governors University (WGU) is experimenting with ways to deliver financial aid in a competency-based educational environment, where student progress is measured not on number of courses taken but rather on the progress they are making toward fulfilling competencies required for their certificate or degree. The model is driven by an individualized student academic action plan. Aid is based on the costs incurred. WGU is currently providing aid only for direct costs and not for living expenses.

Several participants are refining their systems in order to better meet student needs. Brigham Young University has developed a web-based financial aid system that allows users to apply for financial aid, submit personal data, communicate with financial aid personnel and monitor their application processing in a secured environment. Washington State University is improving methods for monitoring satisfactory academic progress and notifying at-risk students, which has increased their students' understanding of this important aspect of their financial aid eligibility. The Quest Colleges

(AIC/Hamilton College) has greatly expanded the hours and methods for providing technical support to its distance education students.

The Number and Type of Students Enrolled

Institutions, systems of institutions and consortia that were selected to participate in the Demonstration Program were required to file baseline data reports covering the 1998-99 award year (July 1 – June 30) and to file annual reports for each award year for the duration of their participation. Thus, at this point in the Demonstration Program, ED does have some preliminary information concerning student trends based on comparison of the baseline data with the data provided for the period July 1, 1999 – June 30, 2000, the first year of the Demonstration Program.

Summarized below are a number of trends that are evident from the data to date. However, with comparative data for only one year of the Demonstration Program, it is too soon to report, even preliminarily, on some important quality indicators, particularly those related to student retention and completion. Participants do point out that the enrollment patterns of distance education students, many of whom are adults with many competing priorities, seem to differ from that of more traditionally-aged students enrolled in on-site programs. The distance education students tend to drop in and out, making it more difficult to assess retention over the short term. Analysis of patterns of student attendance based on actual data provided by participants will be included in subsequent reports.

Student Characteristics

Two-thirds of all Demonstration Program participants reported a higher representation of females in their distance education programs than males. This is not surprising since women now constitute the majority of students enrolled in higher education nationwide. However, 11 of the 13 participants with both on-site and distance education programs reported higher percentages of women enrolled in their distance education programs than in their on-site programs, which testifies to the particular appeal distance education has for women. The exception is those institutions that have distance education programs in computer fields, which tend to have higher enrollments of males than females. There is also a high representation of females in the group taking both distance education and on-site courses.

Students enrolled in distance education programs are older than students enrolled in on-site programs. This is true for every participant offering both distance education and on-site programs. In addition, students aged 36 years and older account for at least a third of distance education program enrollments in all but two Demonstration Program participants and over 50% of such enrollments in half of the participating institutions.

There are notable differences in the racial make-up of students enrolled in distance education programs and those enrolled in on-site programs. With only a few exceptions, smaller percentages of minorities are enrolled in distance education programs than in on-site programs at participating institutions. This is true as well of students taking both on-site and distance education courses. The data participants reported do not provide any clues as to why this might be the case. However, lower participation could be an effect of the "digital divide" between minority and majority and lower income and higher income populations. Logic suggests that the more exposure students have to technology prior to college, the more likely they would be to elect distance education programs and courses. The cost of the technology distance education students might require could be an associated factor even though these costs can be included in calculating the cost of attendance for Title IV purposes. If this pattern of lower participation persists, it will be important to collect information that would enable analysis.

There are no clear trends related to the amount of Title IV aid students enrolled in participants' distance education programs are receiving at this point. There is some indication that these students may be benefiting less from financial aid programs than their on-site counterparts. During the 1999-2000 academic year, four of the 10 participants providing comparative data on financial aid for distance education and on-site students offered aid to smaller percentages of their distance education students than to their students taking only on-site courses. However, two participants provided aid to larger percentages of their distance education students than on-site students, while the remaining institutions supported roughly the same percentages of students in these two categories. When less aid is provided to distance education students, the difference may be attributable to the fact that distance education students are more likely to be working and attending school part-time. They may not be eligible for aid or may have their educational expenses paid by their employers.

Further complicating this picture is the fact that almost all participants have on-site students that enroll in one or more distance education courses during an academic year. Four participants provided financial aid to larger percentages of these students than they did either to those students enrolled in distance education programs or to those taking only on-site courses.

It is conceivable that a clearer picture will emerge for future reports to Congress, particularly since they will draw on data from a larger group of participants. If indicated, this information could be supplemented by interviews with financial aid administrators.

Programs and Enrollments

Data provided by Demonstration Program participants show that student enrollments in distance education are growing across all sectors of postsecondary education. The total number of students enrolled in distance education programs offered by participants grew substantially from the 1998-99 academic year to the 1999-2000 academic year from just under 13,000 to over 18,200. Most participants also added new distance education programs during the 1999-2000 academic year, resulting in a total number of more than 150 certificate or degree programs offered by Demonstration Program participants. Every participant reported increases in the number of distance education courses and enrollments from year 1 to year 2. In some cases, these increases were substantial. The chart below provides institution specific program and enrollment information.

SUMMARY OF PROGRAMS AND ENROLLMENTS FOR 1999-2000

Institution	Number and Type of Distance Education Programs	Distance Education Program Enrollments	On-site Program Enrollments
Capella University	36 Certificate; 1 Bachelor; 11 Graduate	1,049	No traditional onsite classes – 897 in independent study programs
Community Colleges of Colorado	1 Associate	159	2,040 (comparable program)
Connecticut Distance Learning Consortium	1 Associate;2 Bachelor; 1 Graduate	380	62,546
Florida State University	2 Bachelor; 3 Graduate	721	729 (comparable programs)
Franklin University	5 Bachelor	296	2,023 (comparable programs)
LDS Church Education System	1 Bachelor	187	58,011
Masters Institute (now longer participating)	2 Certificate; 1 Bachelor	1,274	921
New York University	2 Graduate	166	798 (comparable programs)
North Dakota University System	10 Associate; 8 Bachelor; 7 Graduate	3,215	49,989
Quest – AICC/HC (now Kaplan College)	7 Certificate; 2 Bachelor	61	2,707
Southern Christian University	4 Bachelor; 4 Graduate	156	13
University of Maryland University College	14 Bachelor; 10 graduate	7,955	16,926
Washington State University	8 Bachelor	1,042	1,077 (comparable programs)
Washington Community and Technical Colleges	1 Associate	1,395	83,984
Western Governors University	3 Certificate; 4 Bachelor; 1 Graduate	208	none

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In addition to WGU, which has no on-site programs, three individual institutions in the Demonstration Program are approaching the 50% course threshold. Two of these institutions are at opposite ends of the scale in terms of size, reporting the second smallest (631) and the largest (over 36,000) distance education course enrollments. They are also two of three Demonstration Program participants reporting a *decrease* in the number of on-site courses and enrollments from the 1998-99 to 1999-2000 reporting period, indicating a significant shift in institutional character. The other participant in the group offers independent study courses rather than traditional on-site instruction. This institution is experiencing a shift toward its new online, cohort-based distance education programs and a decrease in its independent study courses to the extent that over 50% of its students are now enrolled in distance education programs.

In the second year of the Demonstration Program, participants increased the number of distance education programs offered at all levels (certificates, associate's, bachelor's and graduate degrees). Enrollments increase commensurate with growth in numbers of new programs. The smallest enrollments, and least growth in enrollment, are reported in distance education certificate programs. On the other hand, one institution reports nearly 8,000 students enrolled in its 24 distance education bachelor's or master's degree programs.

There is overlap in the kinds of distance education courses and degrees being offered by participants, reflecting common perceptions of what is most marketable. Nearly 30% of participants offer distance education graduate degree programs in the areas of business or education. At the associate's and bachelor's degree levels, computer and information science programs are the most popular offerings, followed closely by humanities and health-related degrees.

Optimism about future growth is high, particularly for Internet-based distance education. All participants plan to add a large number of sections of Internet-based distance education courses over the next three years. Most institutions using other technologies, such as interactive video and videotapes, also plan to add sections using these technologies. Those offering print-based correspondence study plan to continue this delivery mode, and anticipate some growth in number of sections offered, although not as much as for Internet-based delivery.

Student Motivation and Satisfaction

Participants were required to survey distance education students to determine their level of satisfaction with programs and services, their reasons for enrolling as distance education students, and whether or not they perceived any barriers to achieving their educational goals. The primary reason students at participating institutions gave for engaging in distance education is the increased flexibility it affords. Flexibility is attractive to students who are able to take courses on-site as well as those who are truly "distant." Program participants report that many students take both distance education and on-site courses. Most important for both groups is flexibility in terms of work schedule, followed closely by flexibility of place, and also in time so that they may attend to family responsibilities. Other frequently cited reasons for taking distance education courses include the quality of the distance education programs offered and personal preference for this mode of delivery.

The vast majority of students mixing on-site and distance education delivery modes took their distance education courses from their home institution. This is equally true for consortium and single institution participants.

Not surprisingly, the majority of students enrolled in participants' distance education courses and programs have as their primary goal attaining a degree or certificate. Many are oriented toward preparing themselves for future employment or advancement in their current employment. In contrast to, or perhaps complementing these pragmatic goals, students frequently mentioned being motivated by the desire for personal enrichment.

The content of the curriculum for their distance education certificate or degree program is highly rated by the majority of students responding to surveys. However, students expressed some dissatisfaction with the amount of their interaction with other students and with faculty members, and with the timeliness of feedback. This aspect of distance education is receiving a great deal of attention in the community, with articles in the distance education literature and conference sessions providing guidance on ways to train faculty on strategies to increase and support interaction and on available technical tools to assist them in providing feedback.

Participants' distance education students express high levels of satisfaction with basic administrative services provided by institutions where they are enrolled – particularly registration and the availability of information. Most participants provide an acceptable level of technical assistance to help students resolve problems with accessing courses, configuring their computers, and dealing with other technical issues that can be frustrating to the distance education student. However, satisfaction ratings are lower for academic services, such as advising and access to library and other learning materials, which are more challenging to provide online. The need for online student services is currently receiving a good deal of attention nationally. Progress should be rapid in improving this aspect of distance education programs at many schools, including Demonstration Program participants.

In spite of these deficiencies in academic services, a large percentage of student respondents reported no barriers to completion of their distance education courses or programs. Students enrolled in distance education programs who did identify barriers cited "insufficient finances" most frequently. It is not clear whether these insufficiencies result from lack of financial aid, or other factors. ED staff will work with participants to try to clarify the reasons students report lack of finances as potentially impeding completion.

Effective Technologies

The literature in the area of distance education tends to focus on questions relating to educational effectiveness, as opposed to what are the most effective technologies. Over the last few years, there has been considerable debate among educators and the public at large over the relative value of distance education vis-a-vis on-campus study. On the one hand, there are supporters of distance education who contend there is no significant difference between distance and on-campus education. Thomas Russell, for example, has collected considerable evidence that there is no significant difference between the two kinds of education, which he has made available on the web[2]. Detractors, including David Nobel from York University in Toronto, argue against the commercialization of higher education, which they contend is spurred by distance education, and warn of increased abuses of intellectual property and faculty rights.[3] While there is still considerable disagreement, a consensus of opinion among many educators seems to be that what matters most is that the course, whether offered on-campus or delivered using some mode of distance delivery, is well-designed to engage the student in an effective learning experience and that it is rich in content. The likely conclusion to this discussion over the merits of distance education is that the learning experience is different and meets the needs of different kinds of students.

The other focus of discussion has been around what standards to use in evaluating quality in distance education. Several national groups have recently published guidelines or standards for quality distance education[4]. The Western Cooperative for Educational Telecommunications has been a leader in this area. All of these reports avoid endorsing a particular technology as the most effective. At the moment, the Institute for Higher Education Policy study, Quality on the Line: Benchmarks for Success in Internet-Based Distance Education, while dealing solely with Internet-based delivery modes, may be the best single resource currently since the benchmarks used for the study include those developed for distance education generally by a number of organizations. The benchmarks speak to the need for a comprehensive system to support distance education course design and delivery. Components include:

- the development and maintenance of the technical infrastructure;
- adequate training for faculty and students in technical tools and distance education teaching and learning strategies;
- readily-available technical assistance;
- support for interaction between students and faculty and among students;
- engagement of students in tasks that require higher-order thinking skills; and
- ongoing evaluation and assessment of the curriculum and teaching/learning processes.

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[2] The "No Significant Difference Phenomenon" reflects a bibliographical database of research comparing traditional classroom-based and distance education approaches to instruction. This site builds on the 1999 book compiled by Thomas Russell. It also includes research that *does* demonstrate significant differences. http://cuda.teleeducation.nb.ca/nosignificantdifference/

[3] A series of essays by David Noble, entitle "Digital Diploma Mills", is available online at http://www.communication.ucsd.edu/dl A related article "Digital Diploma Mills: The Automation of Higher Education" appeared in the online journal *First Monday* Jan. 5, 1998 http://www.firstmonday.dk/issues/issue3_1/noble/

[4] American Federation of Teachers, *Distance Education: Guidelines for Good Practice*, May 2000. The Institute for Higher Education Policy, *Quality on the Line: Benchmarks for Success in Internet-Based Distance Education*, April 2000 (funded by National Education Association and Blackboard). American Council on Education, Guiding Principles for Distance Learning in a Learning Society, 1996. Western Cooperative for Educational Telecommunications and the Eight Regional Accrediting Commissions, *Draft Guidelines for the Evaluation of Electronically Offered Degree and Certificate Programs*, September, 2000.

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These benchmarks emphasize the importance of selecting technologies that are appropriate for the curriculum, that are accessible to students, and that support interaction.

Participants in the Demonstration Program use a variety of technologies for their distance education programs including print-based correspondence study, one-way and two-way live video, audiotapes, videotapes, voice-mail, CD-ROM, and the Internet. Frequently, they use a combination of technologies to support content delivery, one-to-one and one-to-many interaction, group work, and other aspects of a rich learning environment. For example, an institution might offer a course consisting of a series of videotapes; a textbook and accompanying web site with additional resource materials and self-assessment exercises; an online syllabus that provides detailed information about assignments; online conferences and study groups; email; and a technical assistance telephone hotline. It is important to note in any discussion of the effectiveness of technology that the environment is changing rapidly and the potential of current and emerging technologies for distance education has not yet been fully realized. The experiences of educators such as those involved in the Demonstration Program will influence the development of capabilities that will enhance and perhaps transform the teaching/learning process in both distance education and traditional delivery modes.

The clear trend among Demonstration Program participants is toward increased use of Internet-based technologies, both synchronous and asynchronous. This reflects the trend nationally[5] and speaks to learners' increased access to computers, and to the growing emphasis in the distance education community on the importance of using distance education technologies to support interaction. Nonetheless, the ease of use and the ubiquitous nature of print, telephone and videotapes make them an appropriate choice for certain populations, and these technologies continue to be used by Demonstration Program participants. Two-way interactive video technologies, which most closely emulate the classroom experience, are also continuing to be used by a subset of participants.

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[5] National Center for Education Statistics. *Distance Education at Postsecondary Education Institutions: 1997-98*, December, 1999.

STUDENT AID ISSUES

Context

At the time of the HEA reauthorization in 1992, the postsecondary education landscape was very different than it is today. High-profile cases of fraud and abuse in some of the schools that delivered instruction primarily by print-based correspondence focused attention on that industry. Congress addressed this problem in a number of ways. First, it enacted institutional eligibility requirements that effectively barred "correspondence schools" and others offering over half of their courses via correspondence, or a combination of correspondence and telecommunications, from participating in Title IV programs. The rules also limit to less than 50% the numbers of students an eligible institution may enroll in correspondence courses. Next, Congress restricted the eligibility of correspondence students by allowing them to receive Title IV, student financial assistance only if they were enrolled in associate's, bachelor's, or graduate degree programs. Finally, in response to abuses such as course stretching and other issues of program length, Congress imposed the minimum 30-week academic year requirement.

In the early 1990's, these statutory changes had very little effect on the majority of institutions participating in the Title IV, student financial assistance programs. While many provided distance education via correspondence and/or some form of telecommunications, this was a small part of their activity and most programs, even those designed particularly for adults, were offered on-site. Some institutions may have lengthened their calendars slightly to accommodate the new academic year requirement, but adding a week or so of instruction did not constitute a fundamental change to the pattern of instruction.

However, the postsecondary education landscape has changed dramatically during the last five years due to the accessibility of technological means of communication, and particularly the Internet, which extends the reach of institutions worldwide. This, coupled with a growing demand from adult students for both credit and non-credit postsecondary education, has created new opportunities for schools. The result is a growing acceptance of distance education as a viable, if not a preferred, alternative for providing postsecondary educational opportunities, at least for adults.

There is a growing body of data that documents the growth of distance education in the past few years and that points to increases in the future. Two studies of distance education conducted by the National Center for Educational Statistics (NCES) covering the periods 1994-95 and 1997-98 show the growth in distance education offerings and student participation from 1995 to 1997-98. The data comparisons are reported in the conclusions drawn from the 1997-98 survey. These data show that the percentage of higher education institutions offering courses through distance education grew by one-third from 1995 to 1997-98[6]. This growth was particularly marked among public institutions where the percentage of public two-year institutions offering distance education courses grew from 58% to 72% and the percentage of public four-year institutions, from 62% to 79%.[7] The 1997-98 study also concludes that there were approximately twice the numbers of distance education enrollments and courses and the numbers of distance education degree and certificate programs in 1997-98 than in 1994-95.[8] This growth curve is expected to continue with 84% of four-year colleges expected to offer distance education courses in 2002, up from 62% in 1998 and 2.2 million students expected to enroll in distributed learning courses, up from 710,000 in 1998.[9]

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[6] National Center for Educational Statistics, *Distance Education at Postsecondary Education Institutions: 1997-98*, December, 1999, p. 55.

In addition to this projected growth, new programs announced recently by the U.S. Army and the U.S. Navy have the potential for increasing the amount of distance education courses, programs and student enrollments substantially. The Army has made the commitment to make available distance education certificate and degree programs to every soldier world-wide and recently issued a contract with a learning integrator or coordinator and several colleges and universities to provide a wide array of programs. To facilitate access to these programs, the Army will provide each soldier with a laptop computer. A pilot of this initiative is scheduled to begin in January of 2001. The U.S. Navy has selected sixteen partner colleges and universities and plans to initiate a similar program in January of 2001. The investment in the development of distance education courses and programs that these new initiatives will support almost certainly will have far-reaching consequences in expanding the availability and participation in distance education generally.

Concomitantly, the landscape is changing as the result of a proliferation of models for organizing postsecondary education. This can be attributed, in part, to the desire adults have for flexibility. The organization of instruction in semesters, quarters, or trimesters, i.e. "standard terms" for purposes of this report, is still the preferred method. However, some institutions offer courses in shorter time periods, six or eight weeks, for example, and some are offering instruction in overlapping terms to allow students to pace the demands of course work. Multiple start dates for programs that allow students to begin programs at the times they need the instruction or that are most convenient to their schedules are another emerging organizing principle. Other education providers are devising new time frames because they better match the demands of the curriculum. Programs that combine theory and practice are examples of new organizing principles that may not fit neatly into the tidy structure of a standard term.

Student financial assistance provided under Title IV of the HEA may pose barriers to these developments and others that restrict the growth of distance education and the development of new models. To the extent that the HEA restricts the ability of institutions to meet new needs with new programs and to exploit the technology to enrich instruction, change may be necessary. However, the future consideration of any such change must be balanced against the risk that such changes may have the unintended consequence of providing new opportunities to abuse federal funds and disadvantage students who depend on that aid.

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[7] Ibid., p. 47.

[8] Ibid., p. 55.

[9]. Moe, Michael and Henry Blodgett, *The Knowledge Web*, Merrill Lunch and Co., Global Securities Research & Economics Group, Global Fundamental Equity Research Department, 2000, p. 172. Cited in *The Power of the Internet for Learning: Moving from Promise to Practice*, Report of the Web-based Education Commission to the President and the Congress of the United States, Washington, DC, December 2000, p. 77

ED's experience in working with the participants in the Demonstration Program has provided information and insight on a range of issues related to HEA requirements and Title IV aid administration. Beyond this, ED has continued to be engaged with the higher education community in discussing issues relating to distance education, quality assurance, and student aid reform. These experiences have also informed our understanding of the changes to the HEA and its implementing regulations that may be required to accommodate the kinds of distance education programs that are currently evolving.

Term Structure – Definitions

Before proceeding to the discussion of the specific issues relating to distance education and student financial assistance, it is important to understand that the statute and the regulations use three different models for the organization of instruction or "term" structures. There is no actual definition of "term" in the statute or the regulations. Rather, working definitions have evolved from what has been common practice in institutions of higher education and from other student aid requirements such as the minimum 30-week academic year requirement:

> A *term* is considered to be a period of time with fixed beginning and end dates.
>
> Quarters, semesters, and trimesters are considered to be *standard terms*. A semester or trimester is a term consisting of approximately 15 weeks during which a full-time student is expected to carry at least 12 semester hours. A quarter is a term consisting of approximately 10-12 weeks during which a full-time student is expected to carry at least 12 quarter credit hours.
>
> A *non-standard term* also has fixed beginning and end dates, and is any term that does not meet the definition of a standard term. A non-standard term program might be offered in terms of differing lengths, or terms that are shorter or longer than a standard term.
>
> A *non-term* program is not organized in terms and may, or may not, have pre-established beginning or end dates. A non-term program might be one that is self-paced, or consist of sequential course work or training.

Although the distinctions among these three models for organizing instruction are not always clear, they do provide a key to understanding how a number of student aid requirements are applied in administering the Title IV student financial assistance programs.

The "50% Rules"

The "50% rules" set forth in sections 102(a)(3)(A) and (B) of the HEA, govern the amount of correspondence education, in terms of courses offered and student enrollment, respectively, that an institution eligible to participate in the Title IV student financial assistance programs may provide. A related provision, section 484(l)(1) of the HEA, effectively limits the amount of aid a student enrolled in distance education courses delivered via telecommunications may receive if the institution offers half or more of its courses by correspondence or telecommunications. The following summary of the relevant legislation and definitions of terms provides a foundation for understanding the complexity of issues related to student aid in non-traditional education.

> Section 101(a)(3)(A) of the HEA and the implementing regulations in 34 CFR 600.7(a)(1)(i). These provisions generally make an otherwise eligible "institution of higher education" ineligible to participate in the Title IV student financial assistance programs if the institution offers more than 50 percent of its courses by correspondence.
>
> Section 102(a)(3)(B) of the HEA and the implementing regulations in 34 CFR 600.7(a)(1)(ii). These provisions generally make an otherwise eligible "institution of higher education" ineligible to participate in the Title IV student financial assistance programs if the institution enrolls 50 percent or more of its regular students in correspondence courses.
>
> Section 484(l)(1) of the HEA and the implementing regulations in 34 CFR 668.38(b). These provisions state that a student enrolled in courses offered through telecommunications in a program of study leading to a recognized degree or certificate (if the certificate programs is at least one year in duration), shall not be considered to be a "correspondence student" if—
> --the institution offers less than 50 percent of its courses by correspondence or telecommunications; and
> --at least 50 percent of the courses offered by the institution lead to a recognized associate, baccalaureate, or graduate degree.

The following definitions are important in determining whether or not institutions are eligible to participate in Title IV programs on the basis of the "50% rules". Note that, in some circumstances, courses offered via telecommunications and videocassette or discs are considered correspondence courses. The terms described below are also used in determining the amount of aid students are eligible to receive and the timing of disbursement.

"Telecommunications Course" Section 484(l) of the HEA; 34 CFR 600.2

> A course offered principally through the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable,

microwave, satellite, audio conference, computer conference, videocassettes or discs.

"Correspondence Course" Section 484(1) of the HEA; 34 CFR 600.2

A home study course provided by an institution under which the institution provides instructional materials, including examination on the materials, to students who are not physically attending classes at the institution. These courses rely primarily on print-based delivery methods.

Courses offered via videocassette and discs if the institution does not offer comparable instruction using videocassettes or discs to students physically attending classes at the institution. That is, they are considered to be correspondence courses if they alone, or in combination with print-based courses, exceed one of the two 50% thresholds.

Courses delivered by telecommunications as defined above if the sum of telecommunications and other correspondence courses offered by the institution equals or exceeds 50% of the total courses offered at the institution.

A course that is part correspondence and part residential.

The term "distance education" is defined in section 486(h) of the HEA for purposes of the Demonstration Program only as an educational process that is characterized by the separation, in time or place, between instructor and student. This definition generally conforms to the current use of the term by institutions.

The rules and definitions are applied to determine institutional eligibility to participate in Title IV programs in the following ways:

- Institutions that offer more than 50% of their courses via correspondence are not eligible to participate in Title IV programs.
- Institutions are also generally not eligible to participate if 50% or more of their regularly enrolled students are enrolled in correspondence courses.
- Institutions with at least 50% of their courses leading to a recognized associate, baccalaureate, or graduate degree and that offer telecommunications courses are eligible to participate unless the sum of correspondence and telecommunications courses equals or exceeds 50 percent of the institution's courses.
- Institutions that provide instruction via independent study are eligible to participate irrespective of the amount of instruction provided via independent

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study and whether or not the faculty member and the student conduct their discussions from a distance or on-site.

The Title IV eligibility of students that are engaged in correspondence study programs is limited in the following ways:

- For purposes of Title IV assistance, a student enrolled solely in a program of study by correspondence cannot be considered to be enrolled more than half time and, in general, is eligible only for costs related directly to instruction such as tuition and fees and, if required, books and supplies.
- Students enrolled in certificate programs offered via correspondence are not eligible to receive Title IV aid.

Discussion

The "50% rules" were added to the HEA in response to fraud and abuse of Title IV funds by some correspondence schools. The effect of these requirements was to exclude correspondence schools from participation, while permitting the many institutions that offered a lesser amount of correspondence education to continue to participate. All correspondence students, however, were affected by the changes in the amount of aid they could receive. Since 1992, when the 50% rules were enacted, the extent of distance education, which includes a variety of modes of delivery including correspondence, has increased substantially, raising new policy questions:

- Should the HEA distinguish among the various means of delivering education, either between distance education delivery methods, or between distance education and on-site educational delivery, for purposes of Title IV aid?
- Should the current Title IV requirements protecting the public investment in Title IV funds that relate to distinctions between delivery modes be retained, modified, or replaced?
- Should the current rules governing the amount of distance education an eligible institution may provide be retained, modified or replaced?
- Is there an alternative to the "12-hour rule" that would ensure that the amount of instruction is adequate in the variety of ways that academic activity is organized in distance education?
- Should the current rules that treat correspondence students differently from other students be retained, modified or replaced?
- Are there additional waiver authorities that would improve the Demonstration Program and enable it to test more completely new approaches to administering

student financial aid that accommodate new and emerging patterns of organizing instruction through distance education?

Current trends in postsecondary education support further exploration of the above questions. For example, with respect to current statutory distinctions between correspondence and telecommunications courses, quality guidelines and standards are emerging from both the distance education and accrediting communities that specify the use of telecommunications technologies to support regular interaction between and among students, and between the student and the faculty member, in distance education courses. This further distinguishes traditional correspondence instruction from distance education via telecommunications.

Next, many institutions are providing courses and programs using a variety of delivery methods and allowing both on-site students and distance students to select their preferred mode of delivery on a course-by-course basis. State systems of higher education and participation of institutions in consortia, which today range from small to over 700 schools, extend students' choices significantly. Ultimately, it may be very difficult to determine which students study at a distance and which study on campus or at another site. Demonstration Program participants have thus far found it difficult to establish a cohort of distance education students for reporting purposes, because most do not make the distinction between courses offered on-site and courses offered at a distance, or even between programs, if they are offered in both on-site and distance education modes.

Furthermore, the use of web resources in courses will be pervasive, further blurring the distinction between on-site and distance education. Is a course, for example, delivered primarily via the Internet to a student's residence hall room any less a distance course than a course delivered to a student's home miles away, but which requires one week of on-campus residence? Meanwhile, although most of the distance courses being developed today involve the use of the Internet or two-way video, correspondence courses remain part of this mix and are likely to remain so.

Rules Relating to Time

Programs must meet the required minimum of weeks of instruction to meet eligibility requirements under Title IV. The statute and regulations define an academic year as a minimum of 30 weeks of instructional time during which a full-time undergraduate student is expected to complete at least 24 semester or trimester hours, 36 quarter hours, or 900 clock hours.

Time is used in several ways in both the HEA and the regulations:

- The 30-week requirement serves as a proxy for ensuring that institutions of higher education are providing an amount of instruction adequate to warrant the taxpayers' investment in Title IV student aid. The regulations implementing the provision define a week of instruction for programs offered in standard terms as "any week in which there is at least one day of academic activity." The regulations define a week of instruction for programs offered in non-standard terms and non-terms as "any week in which there are twelve hours of instruction." (See term structure definitions provided on p.18 of this report.)

- The 30-week requirement also serves as the baseline for calculating the amount of aid a student enrolled in less than a 30-week program is eligible to receive. If a student is enrolled in a program of less than 30 weeks, the award must be adjusted accordingly. For a Pell Grant, the grant amount is prorated. For a student loan, the adjustment involves either proration of the loan or lengthening the amount of time before the student is eligible to receive a subsequent loan.

- Time is also used to establish a framework for disbursement of aid. A second loan disbursement, for example, cannot be made until the student completes half of the work undertaken in the loan period, or reaches the midpoint of the academic year established for the program, whichever is later.

Discussion

For programs that are offered in standard terms, i.e., semesters or quarters, a week of instruction is defined as any week in which there is at least one day of instruction. For programs that are offered in non-standard terms or non-terms, a week of instruction is defined as any week in which there are at least 12 hours of instructional time. The 12-hour rule is derived from the Carnegie Unit and is widely used as a rough measure of the amount of time a student or a faculty member might spend in the classroom. The concept underlying the Carnegie Unit presumes that, generally speaking, a 3-credit course provides 3 hours of instruction per week and requires 6-hours of out of class work; thus, 12 credits would entail 12 hours of instruction per week and supposedly 24 hours of out of class work.

The 30 weeks of instructional time requirement in general parallels the organization of academic programs used by most degree granting institutions, with courses and programs beginning typically in August or early September and ending in May with a winter break between the first and second semesters. This is the predominant pattern for distance education courses and programs as well as on-site. Where distance education courses are offered on the same general schedule as on-site courses and are structured so that they involve instructional activity on a weekly basis, administration of aid is not more difficult for students in distance education programs than in on-site programs. However, the requirements for administering aid are more difficult when courses offered in standard terms are self-paced and may not require instructional activity on a weekly basis. The benefit of self-paced courses is that they provide students more flexibility to choose the most convenient times for them to engage in instructional activities.

The 12-hour rule requires schools that offer programs in non-standard or non-terms to provide 12 hours of instruction per week for it to count as a full week of instructional time. If a program provides 12 hours of instruction, students qualify for the maximum amount of aid available. If the program provides less than 12 hours of instruction per week, either the award is adjusted downward and/or the length of time between disbursements is lengthened until the student has received an amount of instruction equivalent to 12 hours per week.

It is difficult if not impossible for distance education programs offered in non-standard terms and non-terms to comply with the 12-hour rule. The regulation would seem to require that full-time distance education students spend 12 hours per week "receiving" instruction. There is no meaningful way to measure 12 hours of instruction in a distance education class. Distance education courses are typically structured in modules that combine both what in an on-site course might be considered instruction and out-of-class work, so there is no distinction between instructional time an "home work." In addition, when they are given the flexibility to move at their own pace, some students will take a shorter time to master the material, while others might take longer.

In the last year or two, there has been considerable discussion between Department staff and representatives of the higher education community who believe the 12 hour rule limits the institutions unreasonably from organizing academic activity in ways that best meet the needs of students. Further consideration of the approaches described in the section, "Student-Based Model for Administering Aid", which begins on page 26 may also help in these discussions.

The definition of a week of instruction, which requires one day of academic activity for standard terms and 12 hours a week for a full-time student in non-standard terms and non-terms, presents obstacles to providing student aid to distance students as described above. The rules also tend to limit the options institutions have to configure academic programs in ways they believe best meet the needs of students and the curriculum. Anecdotal information also suggests that where institutions offer programs in configurations other than standard terms, they often do not provide federal student aid to the students enrolled in those programs simply because of the complexity of Title IV requirements. This limits access to those who can afford to pay or who receive support from other sources, such as employers.

Neither the statute nor the regulations preclude providing aid to students in many of these "non-traditional" models, examples of which are self-paced instruction and terms of less, or more, than 15 weeks. However, institutional systems that support administration of Federal student financial assistance organize processes around standard terms, and typically are not flexible enough to accommodate other models. If changes to the 30-week instructional time requirement were to be made, considerable effort and time would be required to ensure systems changes were in place to support the new model. The barriers posed by institutional computer systems may be more significant in limiting the development of new program configurations than HEA requirements.

Calculation of Awards and Disbursement of Aid

At the outset of this discussion of the calculation of awards and disbursements, it is important to reiterate that the Title IV student financial assistance programs are structured to provide assistance to students on the basis of three different models of organizing instruction. These are "standard terms", "non-standard academic terms," and "non-terms". Definitions of these three "term" structures were provided at the beginning of this section under "Context" (p. 18).

Terms are components of an academic year. Title IV student financial assistance awards are generally calculated on an academic year basis, but are disbursed on a payment period basis. There must be at least two payment periods in any given academic year. There may be any number of disbursements in a given payment period.

In all cases, the academic year must consist of at least 30 weeks of instructional time in order for a full-time student to qualify for the maximum amount of aid available to that student for a given year. An academic year made up of standard terms by definition consists of at least 30 weeks of instruction. For non-standard term programs and non-term programs consisting of fewer than 30 weeks, the award must be prorated, or the time before the student receives a subsequent award extended, until the student has completed 30 weeks of instruction. Applications of these concepts to awarding and disbursing aid is described below:

- In the case of standard terms, an academic year generally consists of two semesters or trimesters, or three quarters, during which an institution must provide at least 30 weeks of instruction. The payment period is the term.
- The institution providing programs in non-standard terms determines the number of terms that make up its academic year. However, the institution must provide at least 30 weeks of instructional time over the course of the non-standard terms in order for a full-time student to qualify for the maximum amount of aid available to that student in a given year. If the academic year contains less than 30 weeks, awards must be prorated. The payment period for non-standard terms is the term, meaning that the institution may have two or multiple payment periods depending upon the number of terms in the academic year.
- Non-term programs may not have fixed beginning or ending dates. To satisfy Title IV program requirements, the institution must define the academic year for the program and establish at least two payment periods within that academic year. Again, the institution must provide 30 weeks of instructional time for the academic year in order for a full-time student to qualify for the maximum amount of aid available to that student in a given year. If the institution provides less than 30 weeks of instructional time in a given year, the award must be adjusted accordingly.

- In both standard term and non-standard term settings, students are eligible to receive Title IV aid based upon the number of credits in which they enrolled or their enrollment status. For example, under the Federal Pell Grant Program, the amount of the award received is based on whether the eligible student is enrolled full-time, three-quarter time, half-time, or less than half-time.

- The situation is different for non-term settings. In the case of non-term programs, aid is calculated on the basis of the credit hours to be attempted in the academic year as defined by the institution. The first Pell Grant and student loan disbursements are made on the basis that the student is a full-time student. A second Pell Grant disbursement could be made when the student has completed the work undertaken during the first payment period; a second student loan disbursement could be made either at the time the student has completed the work or reached the midpoint of the academic year, whichever is later.

Most institutions are well organized to provide academic programs in standard terms, and this works very well for them. However, given the explosion of models of providing instruction today, it is important to consider whether there is a more appropriate alternative to the current student aid disbursement system that should be used for non-standard terms and non-term programs. Ideally, such an alternative would both simplify the existing process and accommodate as yet unanticipated ways of organizing instruction to be developed in the future.

The need for such an alternative is evident in many ways; for example, many schools currently find it difficult to determine whether their programs are non-standard term or non-term. An increasing number of schools also need to accommodate multiple start and stop dates both for programs and individual students, or overlapping terms. Other problems are presented by students selecting courses offered in different term structures during the same period of time. These problems all seem to suggest that consideration be given to developing an alternative-system that enables calculation and disbursement of student aid based upon an individual student's program of instruction rather than a predetermined organization of the curriculum – in other words, a "student-based" model for administering Title IV aid.

Student-Based Model for Administering Aid

The Department's experience in working with Western Governors University in developing a model for administering student aid at that institution, as well as with other participants in the Demonstration Program, provide some insight into how a "student-based" model might be developed utilizing some of the features of the non-term model. WGU provides competency-based certificate and degree programs, and does not itself offer instruction. WGU employs mentors who work individually with students to guide them in the development of their Academic Action Plan (AAP) and evaluate satisfactory academic progress. The AAP is a personalized plan that documents the learning opportunities that the student will engage in to gain the skills and knowledge needed to successfully demonstrate competence on WGU's assessments. Learning opportunities include courses offered by WGU's affiliated education providers (corporations, colleges and universities), independent learning resources, and/or self-study. Put simply, the work of the mentors, development of the AAP, and the competency examinations themselves can be said to comprise the "academic program" offered by WGU. Given WGU's competency-based education model, the Title IV delivery system needed to provide for the following:

- Individual start dates;
- Establishing time periods within which full-time students would be expected to complete a degree or certificate to be used as the basis for determining student enrollment status for purposes of amount of award;
- Definition of the academic year as 365 days in length;
- Awards based on estimated cost of attendance;
- Division of academic year into two equal payment periods;
- Adding courses during the payment period;
- Multiple disbursements within payment periods to accommodate disbursement of funds as costs are incurred; and
- On-going monitoring of academic progress, as measured by completion of competency examinations or components of competency examinations.

While WGU's competency-based model is unique, other institutions offer programs in non-standard and non-terms that have similar needs, the greatest difference being that these programs measure progress in credit hours. One participant, Brigham Young University, for example, is using elements of this model in its Bachelor of General Studies program. Another participant, The University of Maryland University College (UMUC), offers courses in overlapping terms so its students, most of whom are working adults, can better pace their academic work. This means students are adding courses during one payment period and completing them in the next. This practice is currently restricted under Title IV aid requirements.

A student-based delivery model could also address the barriers to meeting the needs of students taking courses from two institutions that do not operate on the same calendar or term structure. The collaboration of Washington State University (WSU), which operates on a semester system, and the Washington Community and Technical Colleges (WCTC) which operate on a quarter system, illustrates this problem. WSU does not disburse aid to pay the charges its students incur for concurrent enrollment at a community college, because the classes at the community college begin considerably earlier than those at WSU. On the other hand, no Washington Community or Technical

College can allow the student to enroll in its courses without payment because of a State policy that precludes them extending the credit of the State by allowing students to attend classes prior to receipt of payment.

The Community Colleges of Colorado (CC of C) currently offer semester-based instruction, but anticipate the need to provide students more flexibility. In the future, they would like to offer courses in overlapping terms, provide multiple start dates for courses and programs and allow students to accelerate their course completion. Current HEA provisions present many barriers to providing Title IV aid in the environment CC of C envisions for its future. However, they have developed a model that will test a student-based delivery system with characteristics similar to those of WGU.

CC of C has adapted its batch mode system for administering student aid to a system that is capable of handling individual student transactions, thus enabling it to accommodate any pattern of instruction that a student might choose. Their model also involves decoupling direct expenses, (those relating to the cost of instruction), and those related to living expenses. Direct expenses would be paid as incurred; living expenses, on the basis of time. This approach would enable students who are accelerating completion of courses to receive the same amount of aid for tuition and fees that they would receive as a student enrolled in a traditional semester based program, but would limit their aid for living expenses to the actual period of study. The CC of C experiment is still in development, but it is an important one in terms of its potential to contribute to the development of policies and systems that will address all of the patterns of instruction that are emerging today and others that may appear in the future.

Administering aid on a student-by-student basis has the potential ultimately to simplify the delivery of student aid to students enrolled in non-standard terms and non-term programs, and to those who combine semester courses with non-standard and non-term courses. This model may also have the potential to reduce some of the risk to Federal funds that may be associated with some non-standard term and non-term programs. Because this model would provide Federal funds only at the time the student actually requires the funds and measure student progress prior to the school drawing down funds for additional disbursements it would appear to limit the amount of Federal dollars at risk. Considerable additional discussion, work and testing of such a system would be required, of course, but as Demonstration Program participants have shown, even at this early stage in the Demonstration Program, this approach is well worth additional consideration in light of the increasing diversity of instructional delivery in postsecondary education today.

The waivers authorized for the Demonstration Program may not provide all of the flexibility required to fully experiment with this model. Further consideration should be given to providing additional waivers that would allow appropriate experimentation with a student-based model for administering Title IV aid. Any statutory changes required would need to be enacted as early as possible to provide ample opportunity for current and new Demonstration Program participants to experiment with the model.

RELATED ISSUES AND POSSIBLE RISKS

Rapid Growth of Distance Education

The Internet, with its potential to expand the reach of higher education dramatically, presents very promising prospects to increase access to higher education and to enrich academic activity. The Internet frees students to pursue education at times that are convenient to them and from any location in the world. The applications of various kinds of technology in the development of courses and programs generally, whether provided to distance or on-campus students, may also engage students in more active learning activities such as problem solving and concept development. At the same time, there are potential risks in the rapid expansion of distance education that require a certain degree of caution when considering the implications for the Title IV student financial assistance programs.

Similar risks relating to rapid growth and increased competition were present in the 1980's as the numbers of institutions offering postsecondary vocational education increased substantially. At that time, there were a number of high-profile program abuses, including questionable recruiting practices, sudden school closures, participation of poor quality schools, and course stretching in order to obtain more student aid. The provisions expanding the Department's oversight authority that were enacted in the late 80's and early 90's and, in particular, in the Higher Education amendments of 1992 have been largely effective in addressing the fraud and abuse in the Title IV programs that occurred primarily in for-profit schools during the 1980's and early 1990's. These remedies, which included recertification, annual review of financial statements, annual Title IV program audits, strengthened requirements for accrediting agency recognition, provisions barring commissioned sales, and termination of schools with high default rates, increased the Department's oversight capability substantially. The Department's re-engineering of the oversight process, which resulted in the development of the case management process, also contributed to the reduction of abuses in the student aid programs.

This strengthened oversight capability of the Department will continue to protect student aid programs during this new period of rapid growth and change in higher education. However, these changes carry with them new risks to the Title IV programs that must be anticipated and managed to protect the integrity of the programs.

Higher Education and e-Commerce

The Internet is not only affecting instructional practices, but business practices as well. As a result, examining some elements of the new e-commerce educational environment may be important to evaluating some of the risks inherent in the current changing higher education marketplace. As recent developments in the "dot.com" world have shown, there is still a good deal to be learned about what it takes to mount and sustain a successful venture. However, some preliminary observations can be made from the Demonstration Program, and from tracking trends in the introduction of e-commerce into the higher education market.

Need for Capital

One of the most important factors in the development of distance education programs is the high cost of course and program development, and the necessary infrastructure to support the endeavor. This, coupled with a competitive market that provides considerable advantages to the first school or business that arrives in the marketplace, requires a substantial investment of capital. Schools have developed a variety of means of generating this capital. Public and private non-profit institutions, including two participants in the Demonstration Program, have formed for-profit entities that they anticipate will generate sufficient capital to support development of their programs. Other institutions, although none to our knowledge in the Demonstration Program, have in various ways managed to identify venture capital for this purpose. For-profit entities, including those in the Demonstration Program, generate capital from partnerships, outside investors, and stock offerings. All of these vehicles for generating capital greatly increase the importance of the profitability of the education provided. Of necessity, profitability will more and more drive the decision-making process. The risk here is increased volatility and rapid change in the higher education market.

Rapid Change and Volatility

Rapid change and volatility raise a particular challenge to ensuring the quality and long-term stability of distance education programs that are eligible for Title IV funds. Current rules governing eligibility for participation in Title IV programs, and approval of change in ownership, as well as current practice in accreditation, provide the same protections in the new educational marketplace as they do in the more traditional environment – as long as accrediting agencies and Department staff are aware of the particular risks the new market poses.

Accrediting agencies are responsible ensuring the quality of education provided. The process that agencies use to evaluate the quality of institutions – self-study by the school against the agency's standards followed by peer evaluation and final action by a Commission or Council – ensures that the evaluation of quality is a careful process, not a rush to judgment. Agencies regard this pathway to accreditation as good practice. It is also embedded in the Secretary of Education's requirements for recognition of accrediting agencies as "gatekeepers" for Title IV purposes. An agency that departed from the effective implementation of this process would be subject to review by the Department of Education and possible removal of recognition. This provides some assurance that the growth of distance education programs and the emergence of new providers will not diminish the quality of education.

Accrediting agencies also provide another protection against volatility. 34 C.F.R. 602.23, part of the requirements for secretarial recognition of accrediting agencies, specifies that the agencies must ensure the quality of education of the accredited school for the duration of the accreditation period granted by the agency. Although accrediting agencies are likely to find this to be a challenge in an evolving distance education context, this continuing requirement provides some assurance that the resources of the school are sufficient to maintain the quality of education offered and provide some protection against program and school closures.

Finally, the implementing regulations also provide some additional assurance of the stability of the new providers seeking eligibility by requiring that a private or for-profit institution operate for at least two years prior to gaining eligibility for Federal student aid.

Acquisitions

Much of what has been discussed above relates to schools seeking to participate in the Title IV programs for the first time. It does not relate to entities that purchase schools that are already accredited, and participating in Title IV programs. Given the time required to achieve accreditation and the two-year operating requirement, the strategy of purchasing schools already participating in Title IV programs may be the most attractive way to enter the higher education market. At one time, Title IV rules halted the flow of Title IV dollars as the request for approval of a change of ownership, which includes approval by the school's accrediting agency, State approval agency, and the Department, was processed. This policy, while providing some protections, disadvantaged students, and as a result the rules were changed to allow for the continuation of aid during the process of review. However, the Department can restrict student aid to those programs already approved for financial aid under the previous ownership until the accrediting agency, the State, and the Department complete their reviews of the change and are prepared to consider the new owner's plans for development.

E-Commerce Practices

As the business practices of e-commerce are interjected into the higher education market, further questions are raised concerning how current Title IV requirements should be applicable to the new context for higher education that is developing. Among these requirements, the prohibitions on commissioned sales are an obvious example. Entrepreneurs entering the market expect to be able to employ marketing practices that are commonly accepted in other industries, yet there may be good reasons, based upon past experience, for retaining the prohibitions.

Other practices common in e-commerce when interjected into higher education might pose new dilemmas. An example might be the common sales practice of selling products and services that appeal to new customers for one price, while current customers pay a higher price. Related to this might be offering new customers discounted prices and benefits that extend for a limited period of time, a practice a number of industries currently use to attract new customers.

Conclusion

There is no question that the world of higher education will continue to change, and that the effect of such changes is as yet unknown. At the moment, most institutions of higher education, even those within the for-profit sector, are willing to share information and best practices to the long-term benefit of the improvement of education across the higher education industry. If competition increases, will institutions guard proprietary information more closely to the detriment of the openness that characterizes higher education institutions today? Will higher education as a sector offer common information so that students and others may make informed comparisons? Will competition impede further movement toward the development of transparent articulation and transfer policies among institutions? Will the shared governance that has been the pattern at most public and private institutions be eroded by the need for quick decisions concerning curricular and program changes? If so, what will be the result? Will more and more institutions purchase courses and programs? How will institutions exercise their responsibility for packaged curricula, particularly in areas where they do not offer instruction themselves? What might be the effect of many institutions offering only those courses and programs that are the least costly to produce or that are likely to attract the largest number of students? If this were to happen, what would be the social impact?

These and the many other questions one might pose concerning the future of higher education do not have much current relevance to Title IV student financial assistance programs, but the answers could change the character of higher education institutions themselves.

There are, of course, risks inherent in the changes that are arising from the growth of opportunities for distance education. However if current policies limit the expansion of distance education, then other alternatives need to be considered to provide the benefits of providing expanded access to distance education programs, both to students and to an economy that depends upon a highly educated and trained workforce. Cognizance of the risks entailed can be applied to building in safeguards to assure that Title IV funds are spent in the way they are intended to benefit students and to serve the public interest.

Since many of the risks suggested in this final section of the report relate to possibilities rather than actualities, it may be helpful to conclude with the participants in the Demonstration Program and some observations about the present situation. The reasons participants are interested in developing distance education programs vary substantially. Public institutions are motivated to expand opportunities for higher education to the citizens of their States. Others are interested in meeting other particular needs – for example, the need to reach students interested in educational opportunities in the context of a particular faith, or the need for easy access to specialized training for career advancement. Both public and private institutions are developing premier distance education programs that showcase the quality of education they provide and meet particular needs in the marketplace. Others are developing programs to sustain the level of enrollments necessary to maintain the fiscal viability of the school.

Many more institutions are developing courses offered wholly or in part via distance education simply to take advantage of the potential technology provides to enrich instruction or to provide student choice. All, of course, are investing in the development of quality distance programs for the promise of future benefit which for some include recognition of leadership in the field, and for others profits. All of these motivations are present in the current cohort of participants in the Demonstration Program. This mixture of motives is likely to persist and contribute to increasing the diversity of higher education that is already one of the primary strengths of our higher education system in the United States.

APPENDIX

BACKGROUND

The Distance Education Demonstration Program, as added to the Higher Education Act of 1965 (HEA) as a new section 486 by the Higher Education Amendments of 1998 (P.L.105-244 was designed to provide information concerning the viability of distance education and the barriers to providing student financial assistance under Title IV of the HEA in distance education contexts. At the time of the HEA reauthorization, it was clear that an increasing number of institutions of higher education were offering, or planning to offer, courses and programs via distance education and that the HEA might present obstacles to providing student aid to distance education students. Several of the provisions that appeared to present the most significant obstacles to the availability of Title IV assistance for the expanding numbers of distance education students had been enacted in the Higher Education Amendments of 1992 (P.L. 102-325). Some of the 1992 amendments addressed fraud and abuse in the correspondence school industry that occurred in the 1980's and early 1990's. Other 1992 amendments addressed issues related to time and its measurement for purposes of calculating student aid amounts and determining eligibility. The Demonstration Program was authorized in 1998 as a way of testing some of the issues before considering policy changes that might again result in increases in fraud and abuse.

Section 486 of the HEA provides for the selection of up to 15 institutions, consortia, and systems to participate in the initial phase of the Demonstration Program. To allow for the experimentation that would provide information that might inform future policy recommendations relating to distance education, the statute authorizes the Secretary to waive certain program requirements for the participants. These are sections 102(a)(3)(A) and (B), and 484(a) and (b) of the HEA, and the implementing regulations for Parts F and G of Title IV of the HEA. The provision authorizing waiver of Part F regulations is moot since the Department is generally prohibited by statute from developing regulations for Part F, which pertains to the determination of a student's need for financial assistance.

On February 4, 1999, the Department published a notice inviting applications for the first year of the program beginning July 1, 1999, and received forty-two applications. The statute specifies that successful applications must meet the requirements relating to administrative capability and financial responsibility to be eligible for participation in the Demonstration Program. The Department screened the applications to determine whether they met these statutory criteria; three were eliminated from further consideration on this basis.

The Department used field readers to assist in evaluating the remaining applications. Four readers, two expert in distance education and two in financial aid, read each of the applications and evaluated them in terms of the criteria provided in the statute. Those applications that were recommended by three or more of these readers were then reviewed by a subset of the readers who, in turn, developed a final slate of applicants for selection by the Secretary.

There have been changes in the participant cohort since the beginning of the program. Kaplan purchased Quest Education Corporation and has renamed the institution that will provide distance education programs "Kaplan College". The Southwest Consortium for the Advancement of Technology in Education (SCATE) had difficulty organizing member schools and is no longer participating. Texas Tech University is the only member of SCATE remaining in the Demonstration Program. The Department removed Masters Institute from the Demonstration Program for violations of Title IV program requirements.

Some of the ideas participants are testing are:

- Bachelor's degree completion programs
- Course sharing
- Increasing capacity to meet student needs
- New methods of enrollment tracking
- Excluding living expenses from the calculation of cost of attendance
- Multiple disbursements/"just in time" delivery of aid
- Alternative methods of providing aid to students who are enrolled in courses and programs that are not offered in standard terms
- Disbursing aid for direct costs as needed and for indirect costs on the basis of time in program

Each participant has an amendment to its Title IV Program Participation Agreement that specifies the particular waivers each has been granted, and describes the program or programs encompassed by the waivers. In some cases, the waivers cover all programs provided by the participant; in other cases, they cover one or more specific programs, but do not include all programs.

The waivers participants required fell in three general areas: the "50% rules" and one implementing regulation, the 30 week instructional year requirement and its implementing regulations, and the regulations relating to enrollment status for correspondence students and satisfactory academic progress standards. Following are the relevant provisions for which waivers were provided:

The "50% rules"

Section 102(a)(3)(A) of the HEA and the implementing regulations in 34 CFR 600.7(a)(l)(i). These provisions generally make an otherwise eligible "institution of higher education" ineligible to participate in the Title IV student financial assistance programs if the institution offers more than 50 percent of its courses by correspondence.

Section 102(a)(3)(B) of the HEA and the implementing regulations in 34 CFR 600.7(a)(l)(ii). These provisions generally make an otherwise eligible "institution of higher education" ineligible to participate in the Title IV student financial assistance programs if the institution enrolls 50 percent or more of its regular students in correspondence courses.

Section 484(l)(1) of the HEA and the implementing regulations in 34 CFR 668.38(b). These provisions state that a student enrolled in courses offered through telecommunications in a program of study leading to a recognized degree or certificate (if the certificate program is at least one year in duration), shall not be considered to be a "correspondence student" if—

--the institution offers less than 50 percent of its courses by correspondence or telecommunications; and

--at least 50 percent of the courses offered by the institution lead to a recognized associate, baccalaureate, or graduate degree.

Time Requirements

Sections 481(a)(2) and (b) of the HEA, and the implementing regulations in 34 CFR 668.2 and 668.8. Among other things, these provisions require a minimum number of weeks of instruction for an "academic year" and an "eligible program."

34 CFR 668.8(b)(2) and (3). These provisions define a "week of instruction."

Other Regulations

34 CFR 668.2. This definition of a "full-time student" precludes a correspondence student from being considered a full-time student.

34 CFR 668.16(e)(3). This regulation deals with the requirements for satisfactory academic progress. The waiver is limited to that part of the rule that requires consistent application of the standards to all students within categories of students.

To recognize their participation in the Demonstration Program, all participants received a waiver of the 50% rules although only one, Western Governors University[10], actually required such a waiver at the time the Demonstration Program began. Waivers of the requirements relating to time and the definition of a correspondence student were provided only if the nature of the participants' program required such waivers.

The statute also authorizes the Secretary to select up to 35 additional institutions, systems of institutions, and consortia to begin participating in the third year of the Demonstration Program, which will commence on July 1, 2001. On September 22, 2000, the Department published a notice inviting applications and informing interested parties about four regional meetings to provide information, advice and technical assistance about applying to participate in the Demonstration Program. These meetings, held during

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[10] Section 486(b)(3)(D) of the HEA explicitly provides that Western Governors University shall be considered eligible to participate in the Demonstration Program and authorizes additional waivers that the Secretary may provide if WGU were to be selected.

October and November 2000 attracted over 150 participants from more than 100 institutions.

The deadline for applications is February 16, 2001. Applicants will be screened by the Department to determine their financial responsibility and administrative capability. Applications that pass the initial screening will be thoroughly reviewed; the Department expects to employ the same two-stage review process as was used for the first year of the Demonstration Program. The first reading is expected to take place during the first two weeks of April, and the second reading is expected to take place in early May. The Department will make the final selection based on the panel recommendations, the significance of the financial aid and distance education experiments proposed, and the need to ensure diversity by size, mission and geographic location. New participants will be announced on or around May 15, 2001.

APPENDIX K - QUESTIONS SUBMITTED FOR THE RECORD TO U.S. SECRETARY OF EDUCATION RODERICK PAIGE BY RANKING MEMBER PATSY MINK, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE

MINORITY WHIP-AT-LARGE

DEMOCRATIC CAUCUS
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CO-CHAIR

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EDUCATION AND THE
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RANKING MEMBER

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GOVERNMENT REFORM

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June 21, 2001

The Honorable Roderick Paige
Secretary
U.S. Department of Education
600 Independence Ave. SW
Washington DC 20202

Dear Secretary Paige:

Yesterday, the Subcommittee on 21st Century Competitiveness of the Committee on Education and the Workforce held a hearing on H.R. 1992. As a result of issues raised at the hearing, we are writing regarding the pending report on the "12 hour rule", and the pending "Dear Colleague" letter clarifying the Incentive Compensation provision.

It is our understanding that the Department is in the final stages of clearing these documents for release. As the Subcommittee is expecting to mark up H.R. 1992 early next week, we are requesting that these two documents be issued immediately, so as to give the Subcommittee sufficient time to have them before the mark-up.

In addition, the following questions were raised at the Subcommittee's hearing, and we would like the Department's response. Since the mark up of H.R. 1992 is imminent, we would like a response by Monday, June 25.

1. Should the criteria for recognition of accrediting agencies require that they have specific standards for evaluating the quantity and quality of distance education programs?-
2. What is the definition of "instruction", as it relates to the 12 hour rule? Should student study groups be included as instruction?

We look forward to the issuance of the 12 hour rule report and the Incentive Compensation letter. We would like a response on the status of these documents by the end of the day Friday. We also look forward to your responses to our questions. These will be very helpful as we continue to work on the issues raised by H.R. 1992. If you have any questions, please call Brendan O'Neil at 225-7116.

Very truly yours,

Patsy T. Mink

PATSY T. MINK
Ranking Member
21st Century Competitiveness Subcommittee

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APPENDIX L - RESPONSES SUBMITTED FOR THE RECORD BY U.S. SECRETARY OF EDUCATION RODERICK PAIGE TO QUESTIONS SUBMITTED BY RANKING MEMBER PATSY MINK, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE

THE SECRETARY OF EDUCATION
WASHINGTON, D.C. 20202

July 24, 2001

The Honorable Patsy T. Mink
House of Representatives
Washington, DC 20515

Dear Representative Mink:

Thank you for your letter regarding the Department of Education's report on the 12-hour rule and future policy guidance clarifying the Incentive Compensation provision. You also requested that we answer two questions raised at the 21st Century Competitiveness Subcommittee's hearing on June 20, 2001. The Administration is completing its review of H.R. 1992 and is currently developing a position on the bill.

In summary, I am pleased to inform you that we:

- Have completed the report on the 12-hour rule;
- Are finalizing the Administration's policy on incentive compensation; and
- With this letter, are responding to the questions raised in the hearing.

I agree with the statement that Dr. Stan Ikenberry of the American Council on Education made at your hearing that "distance education will only continue to expand and we would be foolish to not look for ways to let learners, especially those for whom a traditional classroom setting is impracticable or unavailable, benefit from this powerful tool. If we fail to address this issue, we will be creating an access issue for students who must rely in part on federal aid to achieve their education goals." I am committed to moving forward to expand new educational opportunities and address the recommendations of the Web-based Education Commission while protecting students, taxpayers, and the integrity of the student financial aid programs. We would like to continue working with you during this process to ensure that we find a cost-neutral solution.

Report on the 12-hour Rule

We have completed our report to Congress on the Department's discussions with the higher education community. This report was requested in the conference report on the Department of Education Appropriations Act, 2001 (P.L. 106-554). The enclosed report contains details on the background and history of the 12-hour rule, information from two meetings with the higher education community that were held in October 2000 and January 2001, and information from three focus groups that were held in November and December 2000, and also summarizes the many interesting ideas that were generated during these meetings and focus groups. The enclosed report will be provided to all members of the Committee on Education and the Workforce.

The conference report also requested that the Department make recommendations to Congress by October 1, 2001, regarding the most appropriate means to maintain the integrity of the Federal student financial assistance programs without creating unnecessary paperwork for institutions of higher education. As the Department's Inspector General, Lorraine Lewis, mentioned in her testimony at the hearing, "The key issue in harnessing the growth of the Internet and the advances in educational technology to expand educational opportunities is how to make changes that encourage innovative educational program delivery while ensuring accountability and integrity." We will continue to monitor the issue closely and may propose additional changes if necessary during the reauthorization process.

Incentive Compensation Guidance

The Department is not yet prepared to issue a document on incentive compensation. We want any new guidance on this topic to be clear and not overly prescriptive for institutions of higher education.

Our first priority is to provide clear guidance to schools on the activities that are permissible under the law and regulations on incentive compensation. I agree with the statement made by Chairman McKeon at the hearing that many schools "truly don't know if they are in violation of the law or not." We need to change this situation, because it is clear that the Department needs to provide better guidance in this area.

I am also mindful of the advice given by our Inspector General who said that "the key issue is how to make changes that encourage innovative educational program delivery while ensuring accountability of taxpayer dollars and preserving the integrity of the SFA programs." For this reason, we plan to have new discussions with the higher education community on the safeguards that must be in place to ensure accountability and integrity. We need to strive for a consensus on boundaries that allow our institutions of higher education to operate in a reasonable and predictable environment and that also protect the public from the types of abuses we saw in the past.

Since the day I took office I have focused on tackling the substantial mismanagement and fraud that have cast a cloud over the Department's finances and reputation over the past few years. Faced with 661 audit recommendations, the Management Improvement Team I put in place in April has been working full-time. I reported last week that more than 300 of those recommendations have been addressed. In Student Financial Assistance, I have pledged that we will remove SFA from the General Accounting Office's list of "high risk" programs before the next reauthorization.

I am not about to open the door for fraud and abuse. I will never allow us to go back to the days when commissioned salespersons were paid to bring in unqualified applicants and I don't believe that the higher education community wants that either. I want to listen to the views of the higher education community before providing any new guidance on prohibited activities.

Answers to Questions

1. **Should the criteria for recognition of accrediting agencies require that they have specific standards for evaluating the quantity and quality of distance education programs?**

The Department recognizes accrediting agencies to ensure that these agencies are reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit, for purposes of the Higher Education Act.

Educational quality and quantity for such postsecondary programs are already addressed in the current standards. We plan to discuss the findings in the Inspector General's report, "Management Controls for Distance Education at State Agencies and Accrediting Agencies," released in September 2000 with the state and accrediting agencies and we will continue to work with them in this area. Until accrediting agencies have been given the opportunity to address these concerns, the Department does not believe that new specific Federally-mandated standards for recognition related to distance education are necessary at this time.

Each agency recognized by the Department must demonstrate that it has standards for accreditation, and preaccreditation, if offered, that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits.

The Department considers whether the agency's accreditation standards effectively address the *quality* of the institution or programs in the following areas:

- Success with respect to student achievement in relation to the institution's mission, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates.
- Curricula.
- Faculty.
- Facilities, equipment, and supplies.
- Fiscal and administrative capacity as appropriate, to the specified scale of operations.
- Student support services.
- Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.

- Measures of program length and the objectives of the degrees or credentials offered.
- Record of student complaints received by, or available to, the agency.
- Record of compliance with the institution's program responsibilities under Title IV of the Higher Education Act, based on the most recent student loan default rate data provided by the Department, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency.

Recognized agencies may establish additional accreditation standards that they deem appropriate beyond what is required by the Department's recognition criteria, and many in fact do. These additional standards could include standards specific to distance education.

2. What is the definition of "instruction" as it relates to the 12-hour rule? Should study groups be included as instruction?

In an effort to provide greater flexibility to institutions that serve nontraditional students, the final regulations published on November 29, 1994, considered instruction to include regularly scheduled instruction, examination, or preparation for examination. This instructional time also includes internships, cooperative education programs, independent study and other forms of regularly scheduled instruction. Instructional time does not include periods of orientation, counseling, or vacation. The final regulations published November 1, 2000, clarified that homework does not count as instructional time and that, in terms of "preparation for examinations," only study for final examinations that occurs after the last scheduled day of classes for a payment period would count as instructional time. A study group that did not conform to these regulatory criteria would not be considered as instruction.

Thank you for the opportunity to respond to these issues. I look forward to continuing to work with you, Chairman McKeon, Chairman Boehner, and Representative Miller over the coming years to expand educational opportunities for all Americans.

Sincerely,

Rod Paige

Rod Paige

Enclosure

APPENDIX M - LETTER SUBMITTED FOR THE RECORD BY CHAIRMAN HOWARD P. "BUCK" McKEON, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE, FROM SECRETARY OF EDUCATION RODERICK PAIGE, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, D.C.

THE SECRETARY OF EDUCATION
WASHINGTON, D.C. 20202

July 31, 2001

Honorable Howard "Buck" McKeon
Committee on Education and the Workforce
House of Representatives
Washington, DC 20515

Dear Congressman McKeon:

I am writing to express the views of the Department of Education on H.R. 1992, the Internet Equity and Education Act of 2001, which the Education and the Workforce Committee intends to mark up on August 1. I am sending identical letters to Representatives Boehner, Mink, Miller, and Isakson.

The Administration supports the Isakson substitute to H.R. 1992, which would allow needy students who require federal student aid to have access to the many new educational opportunities now available to other students. H.R. 1992, as modified by the Isakson substitute, would update three provisions of the Higher Education Act of 1965, as amended, (HEA) to accommodate newer educational delivery methods and opportunities and standard business practices. The issues addressed in the bill were raised by the higher education community during the previous administration and, despite repeated urging for the Department to take action, were left unaddressed.

In response to this inaction, the bipartisan Web-based Education Commission, authorized by the Higher Education Amendments of 1998 (P.L. 105-244) and chaired by former Senator Bob Kerrey and Representative Isakson, recommended "a full review and, if necessary, a revision of the 12-hour rule, 50 percent rule, and incentive compensation requirements that are creating barriers to students enrolling in online and distance education courses." It also called upon Congress and the Department to "remove barriers that block full learner access to online learning resources, courses, and programs while ensuring accountability of taxpayer dollars."

As we began putting our new team at the Department in place, I was pleased to see Representative Isakton propose legislation to begin this process and to see you move forward on eliminating these barriers. The Administration has worked with the committee in refining the provisions in the Isakson substitute and joins the higher education community and Members on both sides of the aisle in supporting this legislation.

There may be some who will try to argue that this bill would increase fraud and abuse. Let me assure you that I am not about to open the door for fraud and abuse. Statutory relief from the 50 percent rule would only be extended to low-risk institutions that are currently participating in the Federal student aid programs and have default rates below 10 percent for the last three years.

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

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Moreover, under the Isakson substitute, an institution would be required to notify the Department that it qualifies for the exemption, and the Department would be given the authority to deny the exemption to any institution that poses an unacceptable risk to Federal funds and program integrity. H.R. 1992 would also replace the problematic 12-hour rule, which has been shown to be unworkable for many nontraditional formats, with the same safeguards we have been using for the majority of institutions offering courses in a standard term-based format. However, other safeguards against course length manipulation, such as the 30-week academic year minimum and the clock-hour/credit-hour conversion requirements, would be left in place. As we noted in our recent report on the 12-hour rule, nearly all of the members of the higher education community who participated in the Department's discussions on the subject favored using this uniform standard.

Similarly, the amendments in H.R. 1992 regarding incentive payments contain a new definition of "salary" and a new statutory limitation against salary adjustments that are more frequent than every 6 months, which guards against using frequent salary adjustments as *de facto* commissions. The Isakson substitute would also revise the current provisions to reflect current business practices, including referrals from World Wide Web sites, which did not exist when the provisions were enacted in 1992. However, other safeguards against fraud and abuse would remain in place, such as student eligibility requirements and new requirements for returning Federal aid funds when students drop out. The Administration is aware that there are concerns that the changes H.R. 1992 would make to current law on incentive payments could lead to increased risk of recruiting abuses. We will continue to work with Congress to ensure that this bill includes adequate safeguards to protect students and taxpayers.

Since the day I took office, I have focused on tackling the substantial mismanagement and fraud that cast a cloud over the Department. Working closely with the Inspector General and the U.S. General Accounting Office, we have already made considerable progress in turning that around. Consistent with this new approach, we will closely monitor institutions, enforce the many safeguards that are in place, and aggressively pursue any instances of fraud and abuse in the Federal student aid programs.

The Office of Management and Budget advises that there is no objection to the submission of this report to Congress.

Sincerely,

Rod Paige

Rod Paige

APPENDIX N - WRITTEN STATEMENT SUBMITTED FOR THE RECORD BY CHAIRMAN HOWARD P. "BUCK" McKEON, SUBCOMMITTEE ON 21ST CENTURY COMPETITIVENESS, COMMITTEE ON EDUCATION AND THE WORKFORCE, FROM DR. RON CHENAIL, VICE PRESIDENT FOR ACADEMIC AFFAIRS, NOVA SOUTHEASTERN UNIVERSITY, FORT LAUDERDALE, FLORIDA

COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON 21st CENTURY COMPETITIVENESS

Written Testimony of Ron Chenail, Ph.D.
Vice President for Academic Affairs
Nova Southeastern University
Fort Lauderdale, Florida

"H.R. 1992, The Internet Equity and Education Act of 2001"

Thursday, June 28, 2001

We appreciate having this opportunity to submit written testimony in support of H.R. 1992, the Internet Equity and Education Act of 2001. We would like to thank Congressman Johnny Isakson for his hard work and commitment to Web-based education or distance learning. We believe that distance education provides academia with an unparalleled opportunity to expand the scope and quality of traditional education. This is particularly and uniquely true for Nova Southeastern University ("NSU").

NSU is a pioneer in the field of distance learning, having initiated distance education programs in 1972. We were the first university in the United States to offer graduate programs in an online format with the creation of the electronic classroom, and NSU has been offering online programs and programs with an online component since 1983. NSU was also the first to use the UNIX system to host online courses and one of the first to use the Internet to support instruction. In 2000, *Yahoo Internet Life* ranked NSU among America's 100 most wired universities for the year;. In 1998, *The National Jurist* ranked NSU's Shepherd Broad Law Center at the top if its list of the most wired law schools in the nation. And in 1997, *Forbes* ranked NSU as one of the nation's top cyber-universities. We are also listed in the *Princeton Review's Best Distance Learning Graduate Schools* (1998).

NSU is a dynamic, not-for-profit independent, fully-accredited co-educational institution dedicated to providing high-quality educational programs of distinction from preschool through the professional and doctoral levels, as well as service to the community. Among other distinctions, we are number one in doctorates awarded in education in the entire United States; number one in doctorates awarded to African American in the United Stated; number one in doctorates awarded among all schools in the State of Florida; number two in doctorates awarded in professional and other fields in the United States; number two in doctorates awarded in psychology in the United States; number nine in doctorates awarded in *all* fields in the United States; and number thirteen in doctorates awarded in math and computer science in the United States. Using fall-term enrollment as a measure, NSU is the largest institution of higher education in the Southeast and the fourteenth largest independent institution nationally (about 18,000 in calendar year 2000). Accordingly, we are keenly aware are of and dedicated to maintaining NSU's reputation for innovation and quality in both traditional and distance education. We believe that for institutions like ours to continue to meet the technological advances, changes and challenges of the twenty-first century -- and for Web-based or distance education to reach its highest potential -- the federal regulatory framework within online learning systems currently operate must be reformed.

THE 50% RULE

As you know, the 50% Rule precludes an institution from participation in Title IV, HEA programs if, for the latest complete award year, more than 50 percent of the institution's courses were "correspondence courses", or if 50% or more of the institution's regular enrolled students were enrolled in "correspondence courses." The telecommunications course is considered to be a "correspondence course" if the sum of telecommunications and correspondence courses the institution provided during its latest complete award year equaled or exceeded 50 % of the total number of courses it provided during that year. The purpose of this rule was to respond to fraud and abuse of Title IV funds by some correspondence courses. The affect was to exclude correspondence schools from participating in Title IV, while allowing other institutions that offered a lesser amount of correspondence or telecommunications courses to still take advantage of federal student aid programs. Subsequent to 1992, when the 50% was enacted, there has been a significant expansion of distance education which has been enhanced by the development of new, electronic modes of delivery.

NSU, like many other educational institutions, provides quality guidelines and standards addressing distance education and the interaction between students and faculty members at NSU is very different from the traditional correspondence courses. Currently, the use of Web-resources in NSU courses is pervasive. One question asked in the Report to Congress on the Distance Education Demonstration Program is: "[i]s a course. . .delivered primarily via the Internet to a student's residence hall room any less a distance course than a course delivered to a student's home miles away, but which requires one week of on-campus residence?"

The convergence of online-resources and traditional on-campus education presents one of Web-based education's most promising and interesting opportunities. Additionally, there is no question that online learning represents the wave of the future. Indeed, after years of skepticism and often criticism, even important and influential higher education constituencies like the American Council on Education have come around to admit that "...distance education will only continue to expand and we would be foolish to not look for ways to let learners, especially those for whom a traditional classroom setting is impracticable or unavailable, benefit from this powerful tool."[1]

The solution is simple. Removing telecommunications courses from the "correspondence" category, as provided under H.R. 1992, will allow schools to develop online learning systems without the fear of negative financial repercussions. This will give schools the freedom to use Web-resources in the best manner possible, and encourage the development of additional and more creative applications of the technology. Moreover, the new exception from the correspondence category under H.R. 1992 only applies to schools that already participate in loan programs *and* have a cohort default rate that is less than ten percent. We believe this provision smartly addresses the legitimate issue of fraud and abuse while supporting the important innovations occurring daily in this area.

THE 12-HOUR RULE

Again, in order to be eligible for Title IV, HEA program funds, a student enrolled solely in a program of student by correspondence (telecommunications) must be carrying a work load of at least 12 hours of work per week, or must be earning at least 6 credit hours per semester, trimester, or quarter. A student enrolled solely in correspondence study cannot be considered more than a half-time student. A week of instruction for programs with standard terms (semester, quarters) is defined as any week in which there is at least one day of instruction. For programs that are offered in non-standard terms, a week of instruction is defined as any week in which there are at least 12 hours of instructional time.

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[1] Testimony of Stanley Ikenberry, President, American Council on Education, before the Committee on Education and the Workforce, Subcommittee on 21st Century Competitiveness, June 20, 2001.

H.R. 1992 eliminates the burdensome 12-hour rule applicable to non-standard term programs and instead requires that term programs that are offered on a non-semester basis be held to the same attendance criteria as those offered on a traditional semester basis. Section 481(a)(2) of the HEA of 1965 (20U.S.C. 1088(a)(2) is amended by inserting "[f]or the purpose of any program under this title (whether a standard or nonstandard term program), a week of instruction is defined as a week in which **at least one day of instruction, examination or preparation for examination occurs."** (emphasis added).

The concept of the 12-hour rule was based on the Carnegie Unit and presumes that a 3-credit course provides 3-hours of instruction per week and requires 6-hours of out-of-class work. therefore, 12 credits would entail 12-hours of instruction per week and supposedly 24-hours of class work. But, it is difficult for distance education programs offered in non-standard terms and non-terms to comply with the 12-hour rule. It would require that full-time distance education students spend at least 12-hours per week "receiving" instruction. Distance education courses combine on-site instruction (on the computer) and out-of-class work (home work). Students work at various paces, some mastering the material in a shorter time than others. As NSU and other institutions of higher learning provide more distance education, the elimination of the 12-hour rule for non-standard or non-term programs will decrease the burden to determine the hours in the "classroom" setting. Although under H.R. 1992 there will still be an attendance criteria based on the "standard" term definition of at least one day of instruction in a week, such a requirement is significantly easier to manage than determining if a student in a distance education course has been on a computer for 12-hours in any given week.

Moreover, an academic year is defined as 30 weeks of instruction. With non-standard terms, if the program is less than 30 weeks, the award must be prorated. NSU and other universities often need to accommodate multiple start and end dates. Students selecting courses offered in different term structures during the same period of time may experience problems in receiving financial aid. Many students have become ineligible to receive loans for no other reason than overlapping terms.

NSU and other institutions and constituencies involved in distance learning are not alone in calling for changes to the 12-hour rule. The U.S. Department of Education's Distance Education Demonstration Programs Report itself acknowledged both the problems the federal government has in regulating and implementing the 12-hour rule and the institutions' difficulty in abiding it:

> "It is difficult if not impossible for distance education programs offered in non-standard terms and non-terms to comply with the 12-hour rule .... There is no meaningful way to measure twelve hours of instruction in a distance education class. Distance education courses are typically structured in modules that combine both what in an on-site course might be considered instruction and out-of-class work, so there is no distinction between instructional time and 'home work.' In addition, when they [students] are given the flexibility to move at their own pace, some students will take a shorter time to master the material, while others might take longer."

THE INCENTIVE COMPENSATION RULE

In addition to the 50% and 12-Hour rules, H.R. 1992 clarifies the incentive compensation restrictions with regard to student recruitment so that is clear that the prohibition only applies to non-salary payments to persons directly involved in recruiting students or awarding financial aid as a result of their success in enrolling students at the institution. We agree that the restriction should be moved out of the Program Participation Agreement section so that the Secretary of Education can impose appropriate sanctions in the case of violations, rather than trying to recoup every dollar of financial aid ever distributed by the institution.

SUMMARY AND CONCLUSION

H.R. 1992's resolution of these and other issues will help ensure that online learning technology and distance education programs continue to meet the needs of a growing population of adult students as well as traditional learners. It will also pave the way for new and important uses of this educational model, like the United States Army's new Army University Access Online program ("AUAO"). The AUAO program, only in its first year, provides soldiers the opportunity to earn degrees while still on active duty via Web-based education technologies. For active duty soldiers, online learning is a necessity -- not a convenience or luxury, and other similarly situated members of our military community are interested. Indeed, it is the inherent flexibility of online learning systems has been the primary driver behind Web-based education's increasing popularity. By freeing online learning from the shackles of old, pre-Internet rules, universities and colleges can use this new technology to bring education to people and places that were previously out of reach. H.R. 1992 represents an important first step in reforming the current educational landscape to allow online learning not only to survive, but to flourish.

Again, we applaud Congressman Isakson for moving this initiative forward. In addition, on behalf of NSU, I also want to express my appreciation to the other Members of Congress, including Representative Chaka Fattah, Senators Michael Enzi, Jeff Bingaman and former Senator Bob Kerrey, who paved the way for this Bill through their participation on the Web-based Education Commission.

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